

No. 14-17-00617-CV

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**Fourteenth Court of Appeals**  
**Houston, Texas**

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FILED IN  
4th COURT OF APPEALS  
HOUSTON, TEXAS  
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CHRISTOPHER A. PRINE  
Clerk

**ELAINE T. MARSHALL, AS EXECUTOR OF THE ESTATE OF  
E. PIERCE MARSHALL, ELAINE T. MARSHALL, INDIVIDUALLY,  
AND ELAINE T. MARSHALL, AS TRUSTEE OF THE  
EPM MARITAL INCOME TRUST, *et. al.***

*Appellant,*

**v.**

**PRESTON MARSHALL,**

*Appellee.*

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Appeal from Probate Court Number Four (4), Harris County, Texas, Cause Nos. 365,053;  
365,053-401; 365,053-402; 365,053-403 and 443,778  
The Honorable Christine Butts, Presiding

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**PRESTON MARSHALL'S SUPPLEMENTAL BRIEF**

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## INTRODUCTION

Appellee Preston Marshall (“Preston”) files this supplemental brief to address recent, material developments in the Probate Court. While this appeal was pending, Preston filed a new lawsuit against Appellee Elaine T. Marshall (“Mrs. Marshall”) and the Co-Trustees.<sup>1</sup> The Probate Court granted a temporary injunction enjoining the Co-Trustees from doing a number of things, including taking actions that threatened the Probate Court’s jurisdiction on several issues unrelated to this appeal. But the Probate Court did not grant Preston’s request to enjoin the Co-Trustees from proceeding to attempt to confirm their appointments in Louisiana. That should end this appeal. The relief Mrs. Marshall sought in this appeal was limited to a modification to the Probate Court’s July 12, 2017 temporary injunction order that would allow the Louisiana lawsuit to proceed. The Louisiana lawsuit is proceeding. The Probate Court’s recent ruling is at least an implicit acknowledgement of and acquiescence in that fact. Preston disagrees with that ruling, but he will await the trial court’s final judgment before deciding whether to seek appellate review thereof. Thus, Mrs. Marshall’s appeal from the temporary injunction is moot.

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<sup>1</sup> The Co-Trustees are five strangers—“Dr. Wayne S. Thompson, Jr., Judge Lilynn Cutrer, Dr. Karen Aucoin, Pastor Edward Alexander, and Adam P. Johnson—that Mrs. Marshall appointed as purported co-trustees of the Harrier Trust and the Falcon Trust. 14 RR 151; 14 RR 171.

## **BACKGROUND**

On July 22, 2016, after the underlying matter had been pending in Probate Court for almost nine months, see 1 CR 6, Mrs. Marshall filed a Petition for Declaratory Relief in the 14th Judicial District Court, Calcasieu Parish (the “14th JDC lawsuit”). 8 CR 31. On January 11, 2017, Mrs. Marshall, joined by two of the alleged Co-Trustees, filed a Second Amended Petition for Declaratory Relief in the 14th JDC lawsuit. 8 CR 34. In part, the Second Amended Petition alleges:

By Authentic Act on either December 10 or December 11, 2016, as more fully shown on the attached Exhibit A, Pastor Edward Alexander, Adam P. Johnson, Dr. Wayne S. Thompson, Lilynn Cutrer and Dr. Karen Aucoin became Co-Trustees of the Harrier Trust, along with the initial Trustee, Elaine T Marshall.

It also alleges that:

The Trustees of the Trust are aware of the entry of a judgment in an action in Wyoming; the judgment is attached hereto as Exhibit B. The Trustees respectfully ask this court to examine the Wyoming judgment and declare whether it is entitled to full faith and credit, such that the Harrier Trust and these Trustees are bound by it.

It asks the Louisiana court to declare that:

The Court declare that Pastor Edward Alexander, Adam P. Johnson, Dr. Wayne S. Thompson, Lilynn Cutrer, and Dr. Karen Aucoin, each are properly appointed as a co-trustee of the Harrier Trust in compliance with the provisions of the Act of Donation in Trust and Louisiana law.

It also asks that:

The Court declare that the judgment of the Wyoming Court entered on March 18, 2015 under docket number 16922 on the docket of the Ninth Judicial District of the State of Wyoming in and for Teton County, is entitled

to full faith and credit and that the Trustees of the Harrier Trust be and are bound thereby.

As detailed in his response brief, Preston asked the Probate Court for a temporary restraining order and temporary injunction after he learned about the appointments of the Co-Trustees. *See* 1 CR 370; Preston’s First Amended Response Brief at 9–13. Preston’s request for a temporary injunction ultimately resulted in a nine-day evidentiary hearing.

On July 12, 2017, the Probate Court signed the Order Granting Temporary Relief that is the basis of Mrs. Marshall’s appeal (the “7/12/17 TI”). 1 CR 6. The 7/12/17 TI ordered Mrs. Marshall to take and refrain from taking a number of actions that are not at issue in this appeal. In fact, the only aspect of the 7/12/17 TI that Mrs. Marshall complains about in this appeal is the portion enjoining her from “[t]aking any further action to approve or ratify the appointments of the Co-Trustees.” 1 CR 23; Brief of Appellant at 2.

On September 29, 2017, Preston filed Cause No. 365,053-404 against Mrs. Marshall and the Co-Trustees. Preston requested (among other things) a temporary injunction suspending the Co-Trustees’ powers pending trial on the merits in the newly-filed case. The Probate Court held an evidentiary hearing on Preston’s application for a temporary injunction on November 2 and 3, 2017, and granted a temporary injunction on part of the relief he sought on November 11, 2017 (the “11/7/17 TI”).

The 11/7/17 TI enjoins the Co-Trustees from (among other things):

Attempting to circumvent this Court's jurisdiction over the Harrier and Falcon Trust by 1) seeking validation of the compensation provisions set out in the December 2016 Appointment Documents in any other court; and 2) seeking a determination that the rulings in Wyoming with respect to such Trusts are entitled to full faith and credit.<sup>2</sup>

Nothing else in the 11/7/17 TI, however, even arguably prevents the Co-Trustees from proceeding with any aspect of the 14th JDC lawsuit. In particular, nothing in the 11/7/17 TI prevents the Co-Trustees from moving forward in the 14th JDC lawsuit to seek approval of their appointments.

#### **ARGUMENT**

This Court may only grant Mrs. Marshall the relief she requested. *See Zaidi v. Shah*, 502 S.W.3d 434, 445 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (“As a general rule, however, we can grant parties less relief than requested, but we cannot grant more.”). Here, Mrs. Marshall asked this Court for limited relief: modification of the 7/12/17 TI so the 14th JDC lawsuit can proceed. On page 2 of her opening brief, she “respectfully asks the Court to expedite this appeal so the Louisiana action can be reinstated.” On page 22, she argues that “The temporary injunction should be reversed and the case should be remanded with instructions not to interfere with the pending Louisiana litigation.” She argued that the 7/12/17

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<sup>2</sup> See Tab A. Preston has requested that the Probate Court supplement the record with a copy of the 11/7/17 TI Order. Preston understands that the record will be so supplemented shortly and will file an amended brief with a record cite at that time.

TI “bars Mrs. Marshall from prosecuting her action in Louisiana seeking to ratify the appointment of the co-trustees.” Brief of Appellant at 9.

Mrs. Marshall has already received her requested relief. As Preston explained in his response brief, the 14th JDC litigation is proceeding and the Co-Trustees are moving forward with a motion for summary judgment to affirm their appointments. And, the Probate Court’s 11/7/17 TI does not enjoin the Co-Trustees from proceeding with the aspects of the 14th JDC litigation involving their appointments.<sup>3</sup> It should be undisputed that the Co-Trustees are moving forward with the 14th JDC litigation and that neither of the Probate Court’s temporary injunction orders hinder them from doing so.

The issue in this appeal is no longer restarting the 14th JDC litigation. At most, it is about whether the 7/12/17 TI somehow enjoins Mrs. Marshall from participating in the 14th JDC litigation. But, whether Mrs. Marshall participates or not will make no practical difference because the Co-Trustees can and will prosecute the 14th JDC litigation.

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<sup>3</sup> The 11/7/17 TI did enjoin the Co-Trustees from “Attempting to circumvent this Court’s jurisdiction over the Harrier and Falcon Trust by . . . seeking a determination that the rulings in Wyoming with respect to such Trusts are entitled to full faith and credit.” That is an element of relief sought in the 14th JDC litigation (and clearly an affront to the Probate Court’s jurisdiction). Mrs. Marshall and the Co-Trustees have represented to the Probate Court that they will ask the Louisiana court to drop the claim. They have not yet done so.



In fact, during the recent temporary injunction hearing, Mrs. Marshall's counsel argued that the 7/12/17 TI was not *really* an-anti suit injunction unless the Court enjoined the Co-Trustees too:

Now, if you were to go the additional step and you were to enjoin the co-trustees, then what you've done is you have -- I mean -- absolutely done an anti-suit injunction because everybody on one side of the V in that case in Louisiana is enjoined from doing anything, not just from acting as a trustee, distributing money, taking acts as a trustee, but from doing anything in the lawsuit confirming their appointment.<sup>4</sup>

As even Mrs. Marshall must admit, one side of the 'V' is *not* enjoined from confirming their appointment. Whether one party on one side of the 'V' is so enjoined makes no practical difference.

“[I]t is axiomatic that appellate courts do not decide cases in which no controversy exists between the parties.” *Camarena v. Tex. Employment Comm’n*, 754 S.W.2d 149, 151 (Tex. 1988). A case becomes moot when: (1) it appears that one seeks to obtain a judgment on some controversy, when in reality none exists; or (2) when one seeks a judgment on some matter which, when rendered for any reason, cannot have any practical legal effect on a then-existing controversy. *Tex. Health Care Info. Council v. Seton Health Plan, Inc.*, 94 S.W.3d 841, 846–47 (Tex. App.—Austin 2002, pet. denied).

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<sup>4</sup> Tab B at 55:13–20. Preston has requested that the Probate Court supplement the record with a copy of this transcript. Preston understands that the record will be so supplemented shortly and will file an amended brief with a record cite at that time.

In *State v. KNA Partners*, 2015 WL 4603385 (Tex. App.—Houston [1st Dist.] July 30, 2015, no pet.), the State appealed the conditions contained in a condemnation judgment. The State sought a strip of land along IH 610 that included nine driveways providing access to the IH 610 frontage road. *Id.* at \*1. The jury found in favor of the landowner’s valuation, and the trial court rendered judgment providing that that it “does hereby vest fee simple title in the property . . . in the State upon satisfaction of this Judgment, including the State’s restoration of the nine access drives to [KNA’s] remainder property . . . .” The State argued that the condition requiring it to restore the driveways was improper because, among other things, it effectively locked the State into particular construction plans. *Id.* at \*2. But, while the appeal was pending, the State went ahead and reconstructed all nine driveways. *Id.* at \*3. The court, in response to the landowner’s argument, concluded the appeal was moot because the “[t]he driveways have already been completed, and the only relief that we could grant the State is a declaration that it did not have to build the driveways that it has already built.” *Id.* at \*2. Here, Mrs. Marshall similarly seeks the right to proceed with a lawsuit that is already proceeding apace. *See also In re Smith County*, 521 S.W.3d 447 (Tex. App.—Tyler 2017, no pet.) (dispute involving public information request was moot because district attorney released recordings of a closed door meeting onto the Internet and any order reversing the decision to release the recordings could have no practical

effect); *Olson v. Comm’n for Lawyer Discipline*, 901 S.W. 520, 522 (Tex. App.—El Paso 1995, no writ) (dispute over suspension of deceased attorney’s law license moot because reversing the sanction would have no practical effect).

Even if the 7/12/17 TI does prevent Mrs. Marshall from participating in the 14th JDC litigation to obtain approval of the Co-Trustees, allowing her to do so now will have no practical effect. The Co-Trustees are proceeding ahead in that regard, and Preston’s efforts to stop them from doing so have been rebuffed by the Probate Court’s 11/7/17 TI. In these circumstances, this Court should dismiss the appeal. *See Providian Bancorp Servs. v. Garcia*, 2005 WL 82199, at \*1 (Tex. App.—El Paso Jan. 13, 2005) (dismissing appeal of interlocutory order as moot after trial court reconsidered its prior ruling and compelled arbitration.)

### CONCLUSION

For the reasons set forth above, this Court should dismiss this appeal and assess costs to the party incurring them.

Respectfully submitted,

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**Certificate Of Service**

I hereby certify that on December 8, 2017, a true and correct copy of the above and foregoing motion was forwarded to all counsel of record via the Electronic Service Provider pursuant to the Texas Rules of Appellate Procedure as follows:

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**Certificate Of Compliance**

1. Pursuant to Tex. R. App. P. 9.4, the undersigned certifies this motion complies with the type-volume limitation because it contains 2,672 words.
2. This motion complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

Dated: December 8, 2017

/s/ Max L. Tribble

Max L. Tribble

**Fourteenth Court of Appeals**  
**Houston, Texas**

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**ELAINE T. MARSHALL, AS EXECUTOR OF THE ESTATE OF  
E. PIERCE MARSHALL, ELAINE T. MARSHALL, INDIVIDUALLY,  
AND ELAINE T. MARSHALL, AS TRUSTEE OF THE  
EPM MARITAL INCOME TRUST, *et. al.***

*Appellant,*

**v.**

**PRESTON MARSHALL,**

*Appellee.*

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Appeal from Probate Court Number Four (4), Harris County, Texas, Cause Nos. 365,053;  
365,053-401; 365,053-402; 365,053-403 and 443,778  
The Honorable Christine Butts, Presiding

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**APPENDIX**

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**TAB**

- A**     Order Granting Temporary Injunction
- B**     November 2, 2017 Transcript of Hearing Regarding Preston Marshall's  
Application for Temporary Injunction

# TAB A



NO. 365,053

ESTATE OF §  
§  
E. PIERCE MARSHALL, a/k/a §  
§  
PIERCE MARSHALL, DECEASED §

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NO. 365,053-404

PRESTON MARSHALL, §  
§  
Plaintiff, §  
§  
v. §  
§  
ELAINE T. MARSHALL, Individually, §  
§  
ELAINE T. MARSHALL, as Trustee of §  
§  
the Harrier Trust, ELAINE T. §  
§  
MARSHALL, as Trustee of the Falcon §  
§  
Trust, EDWARD ALEXANDER, §  
§  
Individually, EDWARD ALEXANDER, §  
§  
as Putative Trustee of the Harrier Trust, §  
§  
EDWARD ALEXANDER, as Putative §  
§  
Trustee of the Falcon Trust, ADAM §  
§  
JOHNSON, Individually, ADAM §  
§  
JOHNSON, as Putative Trustee of the §  
§  
Harrier Trust, ADAM JOHNSON, as §  
§  
Putative Trustee of the Falcon Trust, §  
§  
WAYNE THOMPSON, JR., Individually, §  
§  
WAYNE THOMPSON, JR., as Putative §  
§  
Trustee of the Harrier Trust, WAYNE §  
§  
THOMPSON, JR, as Putative Trustee of §  
§  
the Falcon Trust, LILYNN CUTRER, §  
§  
Individually, LILYNN CUTRER, as §  
§  
Putative Trustee of the Harrier Trust, and §  
§  
LILYNN CUTRER, as Putative Trustee §  
§  
of the Falcon Trust, KAREN AUCOIN, §  
§  
Individually, KAREN AUCOIN, as §  
§  
Putative Trustee of the Harrier Trust, §  
§  
KAREN AUCOIN, as Putative Trustee of §  
§  
the Falcon Trust, §  
§  
Defendants. §

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

## **ORDER GRANTING TEMPORARY INJUNCTION**

Plaintiff Preston Marshall (“Preston”) has filed an Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction (“Application”) to prohibit Wayne S. Thompson, Jr., individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Judge Lilynn Cutrer, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Dr. Karen Aucoin, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Pastor Edward Alexander, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; and Adam P. Johnson, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust (collectively, the “Co-Trustees”) from exercising powers, obligations, responsibilities, and rights to compensation from the appointment documents of the Harrier Trust and the Falcon Trust (collectively, the “Trusts”).

The Court has considered the application for a temporary injunction, the response, and the evidence received. The Court concludes that a temporary injunction and other interim relief is necessary to prevent irreparable harm to the property of the Trusts and to maintain the status quo. Based on the authority and evidence presented, the Court finds as follows:

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. General Findings**

1. Preston provided proper notice of the Application.
2. The Court conducted an evidentiary hearing on November 2 and 3, 2017. Preston appeared in person and through counsel. Defendant Elaine T. Marshall (“Mrs. Marshall”) appeared in person and through counsel. The Co-Trustees appeared through counsel only.
3. Evidence closed on November 3, 2017. The Court identified the exhibits that were admitted during the hearing on the record. 11/3 Hrg. Tr. at 9914-102:4. Those exhibits, along with the transcripts of the evidentiary hearing, constitute the record of the hearing.

4. This Court has jurisdiction under §§ 32.001, 32.005, and 32.006 of the Texas Estates Code and §115.001 of the Texas Property Code.
5. Venue is proper in this Court under § 33.002 of the Texas Estates Code and § 115.002 of the Texas Property Code.
6. Elaine T. Marshall is a trustee of each of the Trusts.
7. Preston has asserted causes of action against the Co-Trustees.
8. A trustee has an obligation to follow the terms of a trust instrument.<sup>1</sup>
9. On July 12, 2017, this Court entered an Order Granting Temporary Relief in Cause No. 365,053-401 enjoining Mrs. Marshall from (1) making any additional co-trustee or successor trustee appointments regarding the Trusts; (2) making any payments to the Co-Trustees; (3) taking any further action to approve or ratify the appointments of the Co-Trustees; (4) taking any action in conjunction with the Co-Trustees regarding the Trusts (“Order Granting Temporary Relief”).
10. In its Order Granting Temporary Relief, the Court further ordered that the Co-Trustee’s powers, obligations, responsibilities, and rights to compensation were suspended, pursuant to Texas Property Code § 114.008(a)(9).
11. Further, in its Order Granting Temporary Relief, the Court ordered, pursuant to Texas Property Code § 114.008(a)(9), that the documents appointing the Co-Trustees were suspended.
12. The Co-Trustees have proceeded to act under the appointment documents dated December 6, 2016<sup>2</sup>, despite such appointment documents having been suspended by this Court’s Order Granting Temporary Relief.

**B. Jurisdictional Findings**

13. At the time each of the nonresident Co-Trustees agreed to accept his or her purported appointment as Co-Trustee of the Harrier and Falcon Trusts, each Co-Trustee:
  - a. voluntarily took on the responsibility of administering the Trusts, knowing the

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<sup>1</sup> See Tex. Prop. Code § 113.051 (“The trustee shall administer the trust in good faith according to its terms and this subtitle); La. R.S. § 9:2061 (“The nature and extent of the duties and powers of a trustee are determined from the provisions of the trust instrument, except as otherwise expressly provided in this Code, and, in the absence of any provisions of the trust instrument, by the provisions of this Part and by law.”).

<sup>2</sup> PX-12 (Harrier Trust Appointment of Successor Co-Trustees); PX-13 (Falcon Trust Appointment of Successor Co-Trustees).



Trusts were settled by E. Pierce Marshall, Sr. (“Mr. Marshall”), a Texas resident;<sup>3</sup>

- b. was aware that the Trusts are for the benefit of Preston and his children, who are and have always been Texas residents; 11/2 Hrg. Tr. at 81:2–4, 81:21–82:6.
  - c. was aware that the Trusts have only had a Texas trustee until the appointment of the Co-Trustees; 11/2 Hrg. Tr. at 54:14–23
  - d. was aware that the Trusts have always been administered in Texas, 11/2 Hrg. Tr. at 53:21–54:11; and
  - e. was aware that the Trusts’ assets and bank accounts have always been held in Texas financial institutions. 11/2 Hrg. Tr. at 81:15–82:6.
14. Since their appointment, the Co-Trustees have travelled to Texas to meet with Mrs. Marshall for purposes relating to the Trusts. 11/3 Hrg. Tr. at 85:19–86:22.
15. The Court has personal jurisdiction over each of the nonresident Co-Trustees because each of the Co-Trustees have purposefully availed themselves of the privilege of conducting activities within Texas, have established minimum contacts with Texas, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice.<sup>4</sup>

### **C. The Trusts**

16. On May 5, 2006, Mr. Marshall executed the Last Will and Testament of E. Pierce Marshall (the “Will”).<sup>5</sup> Article III of the Will created the EPM Marital Income Trust (the “Testamentary Marital Income Trust”).<sup>6</sup>
17. On May 5, 2006, Mr. Marshall created the Harrier Trust, and the Falcon Trust.<sup>7</sup> The Harrier Trust is a remainder beneficiary of the Testamentary Marital Income Trust.<sup>8</sup>
18. Preston is the current income beneficiary of the Harrier Trust.<sup>9</sup> At the time Mr. Marshall created the Harrier Trust, Mrs. Marshall was the sole trustee of the Harrier Trust.<sup>10</sup>

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<sup>3</sup> PX-49, PX-50, PX-53, PX-54, PX-57, PX-63, PX-64, PX-70, PX-71

<sup>4</sup> *Retamco Op., Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009); *Dugas Ltd. P’ship v. Dugas*, 341 S.W.3d 504 (Tex. App.—Fort Worth 2011, pet. granted, judgment vacated w.r.m.); *see also Steen Seijo v. Miller*, 425 F. Supp. 2d 191, 200 (D. P.R. 2006).

<sup>5</sup> PX-5 (the Will).

<sup>6</sup> PX-5 (the Will).

<sup>7</sup> PX-2 (Harrier Trust Instrument); PX-3 (Falcon Trust Instrument).

<sup>8</sup> PX-5 at Art. III (the Will).

<sup>9</sup> PX-2 at ¶ 2.1 (Harrier Trust Instrument).

19. Preston is the current income beneficiary of the Falcon Trust.<sup>11</sup> Preston's children are the remainder beneficiaries of the Falcon Trust.<sup>12</sup> When Mr. Marshall created the Falcon Trust, Mrs. Marshall was the sole trustee of the Falcon Trust.<sup>13</sup>
20. Both the Harrier Trust and the Falcon Trust instruments provide:

**6.2 General Administration.** The following provisions shall govern the general administration of the trust.

- A. **Trustee's Fees.** The Trustee shall be entitled to receive reasonable compensation for services actually rendered, which shall not exceed the customary charge imposed by banks or trust companies in the locality for discharging equivalent duties. The Trustee shall be entitled to reimbursement for reasonable expenses incurred and paid in the administration of the trust.<sup>14</sup>

The trust instruments contain no other provisions regarding trustee compensation. 11/3 Hrg. Tr. at 58:4-7.

**D. The Appointments**

21. On September 14, 2016, Mrs. Marshall "selected and designated E. Pierce Marshall, Jr., Dr. Wayne S. Thompson, Jr., Judge Lilynn Cutrer, Dr. Karon Aucoin and Adam P. Johnson as successor Co-Trustees of the Trust."<sup>15</sup>
22. On October 10, 2016, Mrs. Marshall added "Pastor Edward Alexander, Jr. as an additional successor Co-Trustee."<sup>16</sup>
23. On December 6, 2016, Mrs. Marshall purported to appoint "Dr. Wayne S, Thompson Jr., Judge Lilynn Cutrer, Dr. Karen Aucoin, Pastor Edward Alexander and Adam P. Johnson to serve as Co-Trustees" of both the Harrier Trust and the Falcon Trust "effective upon their taking the oath of office."<sup>17</sup> 11/2 Hrg. Tr. at 54:19-23.

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<sup>10</sup> PX-2 (Harrier Trust Instrument).

<sup>11</sup> PX-3 at ¶ 2.1 (Falcon Trust Instrument).

<sup>12</sup> PX-3 at ¶ 2.2 (Falcon Trust Instrument).

<sup>13</sup> PX-3 (Falcon Trust Instrument).

<sup>14</sup> PX-2 at ¶ 6.2 (Harrier Trust Instrument); PX-3 at ¶ 6.2 (Falcon Trust Instrument).

<sup>15</sup> PX-8, PX-9.

<sup>16</sup> PX-10, PX-11.

<sup>17</sup> PX-12 (Harrier Trust Appointment of Co-Trustees)' PX-13 (Falcon Trust Appointment of Co-Trustees).



24. The Appointment Documents<sup>18</sup> provide that:

The appointment of these Co-Trustees is for a term that shall continue for the duration of the Trust and shall continue even should one or more of the Co-Trustees resign or otherwise cease serving. Compensation for the Co-Trustees shall be determined by a formula divided by the number of Co-Trustees serving for that year and compensation shall be paid in quarterly installments or if, for whatever reason, quarterly installments are not able to be made then annually. The Co-Trustees shall divide a trustees' fee for each calendar year not to exceed forty percent (40%) of the gross trust receipts, less any principal distribution received from any trust, during that year. The fee shall equal to the sum of (1) 0.3% of (a) the calculation value, as defined below, of the trust's interest in the PLM/EPM Marital Income Trust and, (b) the fair market value of interests in Trof, Inc., or Ribosome, L.P. to the extent such interests have been distributed by the PLM/EPM Marital Income Trust to the trust, (2) 3% of the fair market value of all other assets, and (3) 5% of the gross trust receipts. For the purpose of this agreement values shall be determined as of December 31st of each year. The calculation value for the trust's interest in the PLM/EPM Marital Income Trust shall equal 60% of the fair market value of the trust's corpus adjusted to present value at a 6% per annum discount rate with an actuarial adjustment based on Mrs. Elaine T. Marshall's life expectancy as determined by the use of Life Table 90 CM as published by the United States Department of the Treasury. There shall be no compensation for the year 2016.

25. Mrs. Marshall appointed the Co-Trustees without having met them or even talked to them. 11/3 Hrg. Tr. at 85:13-18. Since the purported appointment, none of the Co-Trustees have called, written, or had any other personal contact with Preston. 11/2 Hrg. Tr. at 87:3-8, 106:4-18.
26. Preston is likely to succeed on his claim that compensation provisions imbedded within the appointment documents violate the terms of the Trusts. First, the appointment documents impermissibly modify and thus violate the trustee compensation provisions in the Harrier and Falcon Trust Instruments. Section 6.2A of the Trusts states that Trustee "shall be entitled to receive reasonable compensation for services actually rendered." The compensation formula set forth in the appointment documents provides for unreasonably excessive compensation that is not related to the services actually rendered. Further, the total compensation remains the same regardless of the number of Co-Trustees serving. This is a deviation from the terms of the Trusts and inconsistent with the settlor's intent. 11/2 Hrg. Tr. (pm) at 94:1-17 ("Q: Do you believe that they [the December 2016

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<sup>18</sup> The term "Appointment Documents" collectively refers to the appointment documents dated September 14, 2016, October 10, 2016 and December 6, 2016, discussed herein.

compensation provisions] comport with the terms of Harrier and Falcon? A: It is my opinion that they do not.”); *id.* at 94:18-95:2.

27. By one reliable estimate, the present discounted value of the Harrier Co-Trustee compensation is in excess of \$90,000,000 should Elaine pass at 87 years old and the Co-Trustees distribute income annually. 11/2 Hrg. Tr. (pm) at 68:17-70:7. The nominal fees over the same time period exceed \$340,000,000. *Id.* at 72:24-73:9. Should the Co-Trustees elect to accumulate income (which is what they have done so far, 11/2 Hrg. Tr. at 98:11-18), the Co-Trustees would earn over \$657,000,000 over the same time period, or about \$160,000,000 nominally. 11/2 Hrg. Tr. (pm) at 70:12-21. The Co-Trustees would be entitled to this compensation under the formula without regard to the services actually rendered to the Harrier Trust or its beneficiaries.
28. On an annual basis, the Co-Trustees’ compensation could be \$20-30 million. 11/2 Hrg. Tr. at 92:20-93:8; 11/3 Hrg. Tr. at 63:4-12 (opining that in 2045, the fee could be over \$29.5 million).
29. As to the Falcon Trust, by one reliable estimate, the Co-Trustees would receive \$2.7 million in income (present value) if they distribute the income, and \$3.7 million (discounted) if they accumulate the income. 11/2 Hrg. Tr. (pm) at 82:5-13.
30. Even discounted for present value, the most conservative compensation exceeds \$90 million. This Harrier Co-Trustee compensation is unreasonably excessive and exceeds any customary charges in the locality for discharging equivalent duties. *See* 11/3 Hrg. Tr. at 59:12-60:19 (Robinson testimony). Indeed, it is nearly impossible to envision a locality where such massive fees would be appropriate, even assuming the risk inherent or otherwise in administering the Harrier Trust. That the Co-Trustee compensation bears no relationship to the actual amount of work performed and to the amount of responsibility assumed further confirms that the compensation is unreasonable. *Id.* at 60:7-12
31. A proposed reasonable fee for these Trusts would not be based on a percentage of the gross receipts. *Id.* at 67:15-19 (“That’s generally not how it’s done.”). In fact, the Harrier and Falcon Trust instruments do not permit a trustee to be compensated based on a percentage of gross receipts. *Id.* at 78: 13-16. Instead, in the relevant market, the fees would be based on a small basis point charge for the first \$100 million in trust assets, e.g., 10 basis points, and then a lesser basis point charge, e.g., 5 basis points, for the next \$400 million, with anything over \$500 million in assets being charged only one basis point. *Id.* at 60:20-61:16. Such a fee structure would be much more consistent with the intent of the settlor than the compensation scheme set forth in the December 2016 appointment documents.

#### **E. The Louisiana Litigation**

32. On January 11, 2017, Mrs. Marshall served Preston with a copy of a second amended petition for declaratory relief filed that same day in a Louisiana lawsuit initiated by Mrs.



Marshall against Preston (“Louisiana Petition”).<sup>19</sup> In that amended petition, Mrs. Marshall seeks a declaration that the five unknown individuals “each are properly appointed as a co-trustee of the Harrier Trust in compliance with the provisions of the Act of Donation in Trust and Louisiana law.”<sup>20</sup>

33. The Louisiana Petition also states that:

The Trustees of the Trust are aware of the entry of a judgment in an action in Wyoming; the judgment is attached hereto as Exhibit B. The Trustees respectfully ask this Court to examine the Wyoming judgment and declare whether it is entitled to full faith and credit, such that the Harrier Trust and these Trustees are bound by it.

The Co-Trustees further asked the Louisiana court to:

Declare that the judgment of the Wyoming Court entered on March 18, 2015 under docket number 16922 on the docket of the Ninth Judicial District of the State of Wyoming in and for Teton County, is entitled to full faith and credit and that the Trustees of the Harrier Trust be and are bound thereby.

34. On May 12, 2017, Mrs. Marshall and two of the co-trustees (Edward Alexander and Adam Johnson) filed a motion for summary judgment.<sup>21</sup> The motion sought approval of the appointments of the co-trustees. 11/2 Hrg. Tr. at 61:8-16.
35. Originally, the motion was set for a hearing on May 12, 2017, but was continued to September 18, 2017.<sup>22</sup>
36. Preston moved for a stay of the Louisiana summary judgment hearing so he could conduct additional discovery on the appointment issues.<sup>23</sup>
37. The Co-Trustees have attempted to set their motion for partial summary judgment for a hearing since this Court’s July 12, 2017 Order. 11/2 Hrg. Tr. at 61:8-16; 62:5-8; 62:13-18.
38. On October 31, 2017, counsel for the Co-Trustees in Louisiana sent counsel for Preston a letter stating the Co-Trustees request to withdraw their request to have the Louisiana court declare that the Wyoming judgment is entitled to full faith and credit.<sup>24</sup>

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<sup>19</sup> PX-16

<sup>20</sup> PX-16.

<sup>21</sup> PX-36.

<sup>22</sup> PX-43.

<sup>23</sup> PX-43.

<sup>24</sup> DX-\_\_\_\_.



39. The Louisiana lawsuit is a threat to the proper jurisdiction of this Court. In that case, the Co-Trustees—who are purported Trustees—seek relief on issues squarely before this Court. The protection of statutory probate court jurisdiction is an important public policy of this State, and courts are entitled (and required) to protect their jurisdiction so that their rulings and orders are not rendered nullities by competing litigation. It is likewise an important public policy of this State to assert jurisdiction over foreign trustees who would breach their duties to Texas beneficiaries. The circumstances of this case compel this Court to enjoin the Co-Trustees.

**F. Irreparable harm and lack of adequate remedy at law.**

40. Preston is entitled to an injunction because he has been harmed by the appointment of the Co-Trustees. Appointment of the Co-Trustees is an actual injury that can support an injunction. “A prerequisite for injunctive relief is *actual injury*, or the threat of imminent harm, or another’s demonstrable intent to do that for which injunctive relief is sought.”<sup>25</sup>
41. Preston is also entitled to an injunction because there is a threat of imminent harm of the Co-Trustees exercising their powers. Specifically, the Co-Trustees have exercised their powers as trustees by prosecuting a Louisiana lawsuit and will continue to do so unless this Court enters an injunction.<sup>26</sup> 11/2 Hrg. Tr. (pm) at 7:7-19. “Imminent harm is only present when the temporary injunction respondent (appellant) will engage in the activity the applicant (appellees) requests to be enjoined.”<sup>27</sup>
42. Preston will likely suffer irreparable harm because the Co-Trustees will dissipate assets of the Trusts by collecting fees pursuant to the compensation formula. A court may issue a temporary injunction to stop the dissipation of trust assets.<sup>28</sup> The assets and would-be assets of the Harrier Trust are unique, irreplaceable, and unmarketable. 11/2 Hrg. Tr. (pm) at 5:19-6:1; 7:20-23 (“Well I don’t know that you could get them back.”); 9:8-10 (“Q: Would you be able to replace those assets if they were sold? A: I don’t believe so.”);

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<sup>25</sup> *Tri-State Pipe & Equip., Inc. v. S. County Mut. Ins. Co.*, 8 S.W.3d 394, 401 (Tex. App.—Texarkana 1999, no pet.) (emphasis added).

<sup>26</sup> *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 894 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (imminent harm where harm was “of a continuing nature: interference with its ongoing business operations and the ramifications of the disruption caused by that interference.”).

<sup>27</sup> *Perales v. Riviera*, 13-03-002-CV, 2003 WL 21705740, at \*2 (Tex. App.—Corpus Christi July 24, 2003, no pet.)

<sup>28</sup> See *Twyman v. Twyman*, 2009 WL 2050979, at \*5 (Tex. App.—Houston [1st Dist.] July 16, 2009, no pet.); *Callahan v. Lipscomb*, 412 S.W.2d 346, 348 (Tex. App.—San Antonio 1967, writ ref’d n.r.e.); *Minexa Arizona v. Staubach*, 667 S.W.2d 563, 567–568 (Tex. App.—Dallas 1984, no writ); *Gatlin v. GXG, Inc.*, 1994 WL 137233, at \*7 (Tex. App.—Dallas April 19, 1994, no writ),

11/2 Hrg. Tr. (pm) at 91:10-3.

43. Preston has no adequate remedy because the Co-Trustees cannot answer in damages. There is no evidence that the Co-Trustees can answer in damages, and there is no evidence that Mrs. Marshall has indemnified any of the Co-Trustees. 11/3 Hrg. Tr. at 84:5-25. Further, absent this Court's July 2017 Order Granting Temporary Relief, it was intended that the Co-Trustees would have signatory power over the Trusts' accounts. *Id.* at 90:11-23.

### **TEMPORARY INJUNCTION**

In order to avoid destruction of the assets of the Harrier and Falcon Trusts, undo acts taken in contravention of the settlor's intent, prevent impairment of the beneficiaries' rights, protect this Court's jurisdiction, and remedy the Harrier and Falcon Co-Trustees' disregard for this Court's orders and authority, the Court hereby GRANTS the Application.

IT IS THEREFORE ORDERED, that Wayne S. Thompson, Jr., individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Judge Lilynn Cutrer, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Dr. Karen Aucoin, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; Pastor Edward Alexander, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust; and Adam P. Johnson, individually, as putative Trustee of the Harrier Trust, as putative Trustee of the Falcon Trust, or any person claiming to be acting as their officer, agent, servant, employees and/or acting in concert or participation with them, are enjoined from taking the following actions in their capacities as purported Co-Trustees or in their individual capacities regarding the Harrier and Falcon Trusts, including:

- Receiving compensation in accordance with the December 2016 Appointment Documents;
- Taking any action that could affect the Harrier and Falcon Trust assets, including but not limited to transferring, selling, offering for sale, encumbering, or pledging



the trust assets;

- Attempting to circumvent this Court's jurisdiction over the Harrier and Falcon Trust by 1) seeking validation of the compensation provisions set out in the December 2016 Appointment Documents in any other court; and 2) seeking a determination that the rulings in Wyoming with respect to such Trusts are entitled to full faith and credit;
- Assisting Mrs. Marshall in any litigation against Preston Marshall concerning the Harrier and Falcon Trusts.

IT IS FURTHER ORDERED that trial on the merits in this case is set for July 9, 2018, at 9:00 a.m. in the courtroom for Probate Court Number Four (4) of Harris County, Texas or other appropriate venue.

This order shall not be effective unless and until Preston executes and files with the clerk a bond (or cash in lieu thereof), in conformity with the law, in the amount of \$10,000. Preston's cash bond of \$10,000, which he paid into the registry of the Court on October 10, 2017 for the purposes of a temporary restraining order, shall continue for purposes of this temporary injunction. Preston Marshall is ordered to abide by the decision which may be made in these causes, and the cash bond of \$10,000 shall be used to pay all sums of money and costs that may be adjudged against him if this temporary injunction shall be dissolved in whole or in part.

The clerk shall, on the filing of the bond, and on approving the bond according to the law, issue a temporary injunction in conformity with the law and the terms of this order.

Signed on this 7 day of November, 2017.

  
\_\_\_\_\_  
HON. CHRISTINE BUTTS  
JUDGE PRESIDING

# TAB B

REPORTER'S RECORD  
VOLUME 1 OF \_\_\_\_ VOLUMES  
TRIAL COURT CAUSE NO. 365,053-401,-402,-403; 443,778

IN THE MATTER OF ) IN THE PROBATE COURT  
THE ESTATE OF ) NUMBER FOUR (4) OF  
E. PIERCE MARSHALL, A/K/A )  
PIERCE MARSHALL, )  
DECEASED ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

TRIAL COURT CAUSE NO. 365,053-401

PRESTON MARSHALL, ) IN THE PROBATE COURT  
PLAINTIFF )  
vs. ) NUMBER FOUR (4) OF  
ELAINE T. MARSHALL, AS )  
EXECUTOR OF THE ESTATE OF )  
E. PIERCE MARSHALL, ELAINE )  
T. MARSHALL, INDIVIDUALLY, )  
AND ELAINE T. MARSHALL, AS )  
TRUSTEE OF THE EPM MARITAL )  
INCOME TRUST, ELAINE T. )  
MARSHALL, AS TRUSTEE OF )  
THE EPM TESTAMENTARY LEAD )  
TRUST, ELAINE T. MARSHALL, )  
AS TRUSTEE OF THE HARRIER )  
TRUST, ELAINE T. MARSHALL, )  
AS TRUSTEE OF THE FALCON )  
TRUST, )  
DEFENDANTS. ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

REPORTER'S RECORD

PRESTON MARSHALL'S APPLICATION FOR  
TEMPORARY INJUNCTION

\* \* \* \* \*

REPORTER'S RECORD

VOLUME 1 OF \_\_\_\_ VOLUMES

TRIAL COURT CAUSE NO. 365,053-401,-402,-403; 443,778

IN THE MATTER OF ) IN THE PROBATE COURT  
)  
THE ESTATE OF ) NUMBER FOUR (4) OF  
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E. PIERCE MARSHALL, A/K/A )  
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\* \* \* \* \*

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EXECUTOR OF THE ESTATE OF )  
E. PIERCE MARSHALL, ELAINE )  
T. MARSHALL, INDIVIDUALLY, )  
AND ELAINE T. MARSHALL, AS )  
TRUSTEE OF THE EPM MARITAL )  
INCOME TRUST, ELAINE T. )  
MARSHALL, AS TRUSTEE OF )  
THE EPM TESTAMENTARY LEAD )  
TRUST, ELAINE T. MARSHALL, )  
AS TRUSTEE OF THE HARRIER )  
TRUST, ELAINE T. MARSHALL, )  
AS TRUSTEE OF THE FALCON )  
TRUST, )  
DEFENDANTS. ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

On the 2nd day of November, 2017, the following  
proceedings came on to be held in the above-titled and  
numbered cause before the Honorable Christine Butts, Judge  
Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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VOLUME 1

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**EXHIBITS OFFERED BY PLAINTIFF**

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
1	Order Granting Temporary Relief re '401, '402, -403, '778	77 v1	
2	Harrier Trust	93 v1	93 v1
3	Falcon Trust	93 v1	93 v1
8	Harrier Trust Appointment of Successor Co-Trustees	95 v1	95 v1
10	Harrier Trust Appointment of Successor Co-Trustees	96 v1	96 v1
11	Falcon Trust Appointment of Successor Co-Trustees	96 v1	96 v1
5	Last Will & Testament	108 v1	108 v1
13	Falcon Trust Appointment of Co-Trustees	113 v1	113 v1
12	Harrier Trust Appointment of Co-Trustees	113 v1	113 v1
49	Act of Acceptance for Pastor Edward Alexander In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	114 v1	114 v1

**EXHIBITS OFFERED BY PLAINTIFF**

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
50	Act of Acceptance for Pastor Edward Alexander In Re Harrier Trust 2016-3020 14th Judicial District Parish of Calcasieu State of Louisiana	114 v1	114 v1
53	Act of Acceptance for Karen Aucoin In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	114 v1	114 v1
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57	Act of Acceptance for Judge Lilynn Cutrer In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	115 v1	
58	Act of Acceptance for Judge Lilynn Cutrer In Re Harrier Trust 2016-3020 14th Judicial District Parish of Calcasieu State of Louisiana	115 v1	115 v1

**EXHIBITS OFFERED BY PLAINTIFF**

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
63	Act of Acceptance for Adam Johnson In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	116 v1	116 v1
64	Act of Acceptance for Adam Johnson In Re Harrier Trust 2016-3020 14th Judicial District Parish of Calcasieu State of Louisiana	116 v1	116 v1
70	Act of Acceptance for Wayne Thompson In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	116 v1	116 v1
71	Act of Acceptance for Wayne Thompson In Re Harrier Trust 2016-3020 14th Judicial District Parish of Calcasieu State of Louisiana	117 v1	117 v1
4	Defendant E. Marshall's Notice of Production of Accountings	125 v1	125 v1
16	Second Amended Petition for Declaratory Relief In Re Harrier Trust 2016-3020	135 v1	135 v1

**EXHIBITS OFFERED BY PLAINTIFF**

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33	Ex Parte Motion to Deposit Funds Into the Registry of the Court In Re Falcon Trust 2016-3022 14th Judicial District Parish of Calcasieu State of Louisiana	139 v1	139 v1
34	Ex Parte Motion to Deposit Funds Into the Registry of the Court In Re Harrier Trust 2016-3020 14th Judicial District Parish of Calcasieu State of Louisiana	140 v1	140 v1

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**EXHIBITS OFFERED BY DEFENDANTS**

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
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2	Preston Marshall's Fifth Amended Petition	196 v1	196 v1

1                   THE COURT:   Calling to order Cause  
2   No. 365-053 in the -401, the -402, the -403, the -404, and  
3   Cause No. 443-778.

4                   Let's begin by making announcements.

5                   MR. CHAMBERS:   Jeff Chambers for Preston  
6   Marshall, Plaintiff.

7                   MR. TRIBBLE:   Max Tribble for Preston  
8   Marshall.

9                   MS. PACHECO:   Sarah Pacheco, Crain, Catron &  
10   James, for Preston Marshall.

11                  MR. COX:   Trey Cox, Chris Akin, and Kent  
12   Krabill here for Elaine Marshall.

13                  MR. AKIN:   We also have Mike Davis, our  
14   cocounsel, here on behalf of Mrs. Marshall.

15                  MR. WEBER:   Good morning, Your Honor.   My  
16   name is Scott Weber with Calloway Norris Burdette Weber &  
17   Baxter-Thompson.   I am here on behalf of the Defendant  
18   Co-Trustees.   I am here subject to and without waiver of  
19   the special appearance that we have filed.   And I want to  
20   make it clear that anything I say in the next two days is  
21   subject to and without waiver of that special appearance.

22                  THE COURT:   Thank you.   It's understood.

23                  MR. WEBER:   Thank you.

24                  THE COURT:   First, let me apologize for the  
25   fact that we're not in our courtroom.   I know this is the

1 tax court. This is the first time I've even stepped foot  
2 in this room, and I didn't realize it was so small. We  
3 really have very few options, and this was the best that we  
4 can do.

5 Judge Comstock, can I have -- we've went --  
6 we've been searching for a courtroom to hold a four- to  
7 six-week trial with the timeline being this summer -- and  
8 maybe she's communicated to this you, maybe not -- but we  
9 are considering and we're trying to use a courtroom over at  
10 South Texas College of Law for that. It may be that  
11 another courtroom in this building opens up. If it does,  
12 then we'll do our best to have it here. We're also trying  
13 to work with the other court that's sharing our courtroom  
14 to see if we can just stay in Court 4. But -- anyway,  
15 we're working on it; and accommodations will not affect the  
16 court date.

17 So I think today we are hearing the two  
18 preliminary motions: Preston Marshall's motion in limine  
19 and the Co-Trustee Defendants' motion for protection. And  
20 then after that, we will move on to the TI hearing. So...

21 MR. AKIN: Let's first hear Co-Trustee  
22 Defendants' motion for protection.

23 MR. WEBER: Okay. Thank you.

24 Your Honor, first of all, I would, for the  
25 record, object to this motion being heard at this time

1 without being given three days' notice of it. So for the  
2 record, I object to that. It's my motion. And if they're  
3 -- and any -- any side can set a motion for protection  
4 order. And if they want to set my motion for hearing, my  
5 belief is they need to do it under the Rules and give me  
6 three days' notice. So I object to that, and I understand  
7 the Court is going to do what it's going to do.

8 THE COURT: So you didn't set your motion for  
9 protection?

10 MR. WEBER: No, I did not.

11 THE COURT: Okay. Okay. So Judge Comstock  
12 just relayed to me that she put it on the docket sheet but  
13 she didn't get a notice of hearing. So maybe it's  
14 incorrectly put on our docket.

15 MR. WEBER: I -- I did not ask that it be  
16 set, and I did not understand that anybody set it. I see  
17 Judge Comstock's e-mail at 5:05, I believe, yesterday  
18 afternoon. My point is simply this: It's -- it's a motion  
19 that I filed in an abundance of caution because of the  
20 unique circumstances surrounding this case. I did not ask  
21 that it be set, and I didn't understand anybody else set  
22 it. If it was going to be set, it would be my position  
23 that we need three days' notice of it.

24 THE COURT: Sure. Then we won't hear it.

25 MR. WEBER: Thank you.

1                   MR. TRIBBLE: I think that's fine, Your  
2 Honor. In a way, it's moot. I mean, the co-trustees  
3 didn't show up. And -- so...

4                   THE COURT: Okay. So let's move on to  
5 Preston Marshall's motion in limine.

6                   MR. TRIBBLE: So, Your Honor, just so -- do  
7 you have a copy?

8                   THE COURT: I do.

9                   MR. TRIBBLE: Okay. And -- so Preston  
10 Marshall's moving in limine to exclude evidence and  
11 argument regarding alcohol abuse, fights with his spouse,  
12 things like that. Our position is very simple, Your Honor.  
13 None of that evidence is relevant to any of the issues  
14 before the Court today. It's highly prejudicial. But  
15 prejudice greatly outweighs any conceivable relevance and  
16 should be excluded. It's also a big waste of time, because  
17 as we know from Preston's deposition, what the Defendants  
18 intend to do is put him on the stand and ask a bunch of  
19 questions as to which he'll have to assert the Fifth.

20                   And -- so, you know, it's -- at the end of  
21 the day, it's not relevant. It's highly prejudicial and  
22 it's a huge waste of this Court's limited time. They've  
23 argued in the past that this evidence was relevant to their  
24 claim, seeking to modify the terms of the trust. That  
25 issue isn't before the Court in either the temporary

1 injunction motion or the application for receivership. In  
2 the past, they've mentioned an argument about unclean  
3 hands. As the Court knows, the -- an unclean-hands  
4 defense -- first of all, wouldn't apply to a statutory  
5 receivership in any event. But even as to the injunction  
6 under the Court's equitable powers, unclean hands has to be  
7 unclean hands with respect to the particular causes of  
8 action and issues being decided by the Court. It's --  
9 unclean hands is not: Oh, he's a bad person so he never  
10 gets any equitable relief no matter how much it's unrelated  
11 to the actual issues being decided by the Court.

12 MR. COX: Yes. First of all, Your Honor,  
13 number one, it's a Bench trial. We're not dealing with a  
14 jury trial, so a motion in limine is a -- is a little bit  
15 odd. I think it would help contextually to see what the  
16 questions are, how things arise, and deal with them as they  
17 come up, which is totally acceptable because we're not  
18 dealing with a jury here; we're dealing with the Court.  
19 Also, I believe the Court has heard most all of this  
20 evidence, at least in part, in some other context. It is  
21 absolutely relevant. It is relevant to the unclean-hands  
22 defense. If you want to come in here under the Landry's  
23 Seafood case 919 S.W.2d at 927, you have to have clean  
24 hands. If you want to ask a Court to grant you equity, you  
25 need to have done equity. And here where Preston Marshall

1 is coming in not only on behalf of himself but also  
2 purporting to come in on behalf of his children and say: I  
3 need this relief for me and for the parties that I also  
4 represent, my children -- is relevant that he has problems  
5 with domestic abuse. As a result of that domestic abuse,  
6 he has been put under supervisory orders where he's only  
7 allowed to see his children when he's supervised. And --  
8 so if he's going to come into court and purport to act on  
9 behalf of his children as he says in his pleading, then the  
10 unclear hands directly goes to that.

11 In addition, I think that the alcoholism, the  
12 domestic abuse, the fact that he's filed 14 different  
13 lawsuits, his erratic behavior all goes to the issue of  
14 what is an appropriate fee for a trustee for this trust. I  
15 think everyone's expert and everyone's testimony in this is  
16 going to be: Yes. If you have a litigious beneficiary, it  
17 is a legitimate justification to increase the fee. And --  
18 so when we have a litigious, erratic -- someone whose life  
19 is in personal turmoil -- all of these things are relevant  
20 to determining what the fee is. And that's ultimately what  
21 we are here to do is determine whether or not Ms. Marshall  
22 acted within good faith and exercised her discretionary  
23 powers to appoint these co-trustees and to assign their  
24 fee.

25 So for all of those reasons -- I don't think

1 there's any reason to grant the motion in limine. We  
2 should deal with it if and when it comes up. The Court  
3 knows exactly what these issues are. I have no doubt that  
4 the Court will tell me directly and firmly exactly how much  
5 the Court wants to hear or doesn't want to hear on these  
6 issues. I do not think it's appropriate at this time to  
7 enter a categorical limine that says: We will not tolerate  
8 any questions, and I will not evaluate it on a question-by  
9 question-basis because it is totally off limits.

10 And for that reason, the motion should be  
11 denied.

12 MR. TRIBBLE: And -- so, Your Honor, a motion  
13 in limine -- it just means that they shouldn't ask the  
14 Court's permission before going into those areas. And --  
15 so they're free to do that. Again, I didn't hear anything  
16 that this is actually relevant to. And we cited the -- the  
17 *Dudley* case and the *Hutton* case in our brief. But in  
18 addition, last night we found an even better case, which is  
19 the *Beck* case that I'd like to hand out to the Court. I've  
20 got another copy for you if you'd like it.

21 MR. COX: Thank you.

22 MR. TRIBBLE: Ms. Pacheco, could you hand  
23 that to the Court?

24 (Document tendered.)

25 MR. TRIBBLE: And we've highlighted all the



1 copies. And if the Court will turn to Page 19, this is a  
2 case where the lawyer was being sued for malpractice; and  
3 there were allegations of alcohol abuse. And the Court  
4 walks through the analysis of exactly how relevant that --  
5 the alleged alcohol abuse was to a claim of legal  
6 malpractice and the -- the high prejudice that would occur.  
7 And, you know, at the end of the day, just as in the other  
8 cases, this, you know, highly pejorative evidence was  
9 excluded.

10 MR. CHAMBERS: And, Your Honor, if I may just  
11 add something that Mr. Tribble was not aware of.

12 Yesterday there was a hearing in family  
13 court -- first of all, Mr. Cox probably is not familiar  
14 with the issues that have gone on in family court. The  
15 only reason Preston Marshall had supervised visits is  
16 because he agreed to do it so that he would be able to get  
17 access to his children immediately rather than through a  
18 court process. So that was the best deal he could get at  
19 the time with an aggressive lawyer on the other side of the  
20 case. He took it. That was expanded yesterday by the  
21 Court with the full support of the ad litem who's been  
22 involved with the children. So the idea that somehow he's  
23 a danger to his children or something like that is absurd.  
24 There's never been any allegation with respect to him and  
25 his children and that is -- or nothing -- there's been no

1 evidence presented to any court on that issue. So Preston  
2 now enjoys unsupervised visits with his children as of  
3 yesterday. And it's not relevant to anything in here. But  
4 to the extent they're trying to smear somebody, they ought  
5 to at least have their facts right.

6 MR. COX: Two things in response, Your Honor:  
7 Number one, the case -- this newly, recent found case that  
8 we -- just first had an opportunity to deal with, this *Beck*  
9 case, it's a jury trial case. And, again, that was exactly  
10 my point, which is we're not dealing with a jury. We're  
11 dealing with the Court here. And in addition, if that's  
12 the answer that Mr. Marshall wants to give, he's absolutely  
13 free to give that answer. It goes to the weight, and it  
14 goes to the credibility. Because I believe there is  
15 absolutely contrary evidence in the form of his wife's  
16 affidavit that says: He is a danger. I believe he is a  
17 danger to my children and cites the exact reasons for why  
18 he is a danger to the children.

19 So -- I mean that's -- that's the disputed  
20 fact. That's why it's relevant.

21 MR. CHAMBERS: And there will be a place to  
22 try that case. It's over in family court. And that --  
23 this is not the place to try that case where he is actually  
24 the one suffering abuse from his mother, which he's been  
25 enduring for about two years now.

1           THE COURT: Well, I mean, I agree that, you  
2 know, this fight really needs to take place in the family  
3 court with respect to Mr. Marshall and his wife and in the  
4 best interest of their children. And I agree that any  
5 testimony regarding that act should be limited. Because --  
6 I mean, that's -- that can spiral out of control. However,  
7 this is not a jury trial, and -- so I'm going to deny the  
8 motion in limine. However, just be aware that we're really  
9 going to limit testimony with regard to bad acts. I just  
10 don't think we have -- I don't think we have -- it's not  
11 the most efficient use of our time. And if we're going  
12 to -- we're going to plow through everything that we have  
13 to get done today and tomorrow, I think we're going to have  
14 to be really judicious about how we approach that  
15 testimony.

16           MR. COX: I understand. And I -- I  
17 understand -- I understand the Court's ruling; and I  
18 understand the Court will give me guidance in the process;  
19 and, you know, the only thing that I ask is to the extent  
20 or at the end at some point, I may ask of the Court --  
21 depending if there are limitations -- to make a proffer at  
22 some point. But, otherwise, just to make a clean record, I  
23 understand. Thank you.

24           THE COURT: Do you have a proposed order on  
25 the motion in limine? Does anyone?

1           MR. COX: I do not have a proposed order, but  
2 I can get Your Honor one.

3           THE COURT: Okay. Do you guys have --

4           MR. TRIBBLE: I have a proposed order; but,  
5 of course -- the -- and, of course, I hope the Court will  
6 understand that there are criminal charges pending and we  
7 can't allow our client to waive his Fifth Amendment rights.  
8 And -- so when he's asked a question that's out of bounds,  
9 we're going to stand up and say: Objection. Assert the  
10 Fifth.

11           And I think that it will speed things up if  
12 we all just agree that it's taken that he's going to refuse  
13 to answer that question.

14           MR. CHAMBERS: Then to correct the record a  
15 little bit, Ms. Anastasia Marshall also signed the Rule 11  
16 Agreement, allowing unsupervised access to the children.

17           THE COURT: Okay. If you do have a proposed  
18 order, it would be helpful so that I can just keep the  
19 record clean.

20           MR. TRIBBLE: We will get that to you in just  
21 a second, Your Honor.

22           THE COURT: Okay.

23           MR. TRIBBLE: We can print a copy in just a  
24 few minutes, Your Honor.

25           THE COURT: If you guys filed it, we can

1 print it downstairs. We just don't have access to our  
2 files up here.

3 MR. TRIBBLE: We have a printer.

4 THE COURT: Oh, you do? Okay.

5 MR. TRIBBLE: Since there's so much space in  
6 this courtroom -- and we'll print it out. But I think we  
7 can go ahead and proceed if that pleases the Court.

8 THE COURT: Okay. So it is 9:25, and -- are  
9 we ready to begin with Preston Marshall's application for  
10 restraining -- temporary restraining order, temporary  
11 injunction on the injunction?

12 MR. TRIBBLE: We are. And, Your Honor, the  
13 -- we also have set today our application for receivership  
14 --

15 THE COURT: Yes.

16 MR. TRIBBLE: -- and the evidence is the  
17 same. And -- so we would like to just hear -- have the  
18 Court hear both at the same time.

19 MR. COX: We would object. I don't think we  
20 had three days' notice of that.

21 MR. LAHAD: It was filed Monday.

22 THE REPORTER: I'm sorry, Counsel? What was  
23 your --

24 MR. COX: I'm not sure that we got notice of  
25 the hearing.

1 MR. LAHAD: Also filed Monday.

2 I'm John Lahad for Preston Marshall.

3 MR. COX: Yeah. I think it was filed after  
4 hours on Monday. If they've got the -- I mean, if I --  
5 I'll be happy to stand corrected if I'm --

6 MR. TRIBBLE: It was filed Monday, Your  
7 Honor. I mean, you know -- they've been given three days'  
8 notice. I'm mean, there's no requirement that the notice  
9 be sent in before 5:00 o'clock.

10 THE COURT: Is that three days' notice?

11 MR. COX: I don't think that's three days'  
12 notice, but...

13 MS. PACHECO: Yeah. The new Rules don't have  
14 a date. It's just -- I mean, a time; it's just a date.

15 MR. TRIBBLE: So you don't count --

16 MS. PACHECO: It's three days' notice.

17 MR. TRIBBLE: -- the first -- you don't count  
18 Monday, the first day, but Tuesday; Wednesday; Thursday --  
19 three days' notice. I've been practicing --

20 MR. COX: But we're here on Thursday.

21 MR. TRIBBLE: Correct. It's three days'  
22 notice. In other words, I've been practicing in a state  
23 court in San Antonio where the other -- my opposing counsel  
24 routinely sets all motions on three days' notice. And --  
25 at least -- as it's practiced in Bexar County -- I can

1 assure you giving a notice on Monday is three days' notice  
2 for a Thursday hearing.

3 MR. COX: I mean, we're talking about a  
4 receivership for two trusts. I mean, I -- you know, we're  
5 here for the temporary injunction hearing. You know, I  
6 just don't think that's enough notice for the receivership.

7 MR. TRIBBLE: Well, I would suggest that we  
8 proceed; and if there's some law that either side can cite,  
9 we'll come back to that. I mean, it's going to be the same  
10 evidence anyway. I think that the Court could actually  
11 enter a receivership sua sponte on -- on its own motion.  
12 But, in any event, I think we should just go ahead and  
13 proceed.

14 THE COURT: Your objection's noted. And I  
15 won't rule at this time. Let me -- let me have lunch to  
16 look at it, and we'll go ahead and begin -- begin the  
17 hearing.

18 MR. TRIBBLE: Thank you, Your Honor.

19 MR. COX: And...

20 THE COURT: Yes.

21 MR. COX: So should I treat it as we are  
22 proceeding with the receivership hearing or treat it as we  
23 are not proceeding with the receivership hearing?

24 THE COURT: I would -- I would definitely  
25 proceed as if we are hearing the receivership. And I'm

1   sorry, but I'll let you know at lunch how I rule. That's  
2   the only -- I mean, I can take 15 minutes if you want  
3   and -- and look it up and -- or --

4               MR. COX: I mean, I think that's the better  
5   practice. I think we should be on notice as to what it is  
6   that we are defending against when we start the -- kick off  
7   the evidence.

8               MR. TRIBBLE: Well, Your Honor --

9               THE COURT: Well, it may not take 15 minutes,  
10  so let me just take a look at the...

11              MR. TRIBBLE: Sure.

12              MR. COX: And I'm told that the notice was  
13  filed on 9:30 p.m. on Monday.

14              THE COURT: The thing that I'm struggling  
15  with is the Rules, as you know, say three days prior to the  
16  time of the hearing, not the date of the hearing. And --  
17  so I think if it said date of the hearing, that would be --  
18  that would be easier. But for some reason, it's specific  
19  and mentions the time of the hearing. So I'm wondering --  
20  I mean, this just doesn't really answer my question, so...

21              MR. CHAMBERS: May I approach, Your Honor?

22              THE COURT: Sure.

23              MR. CHAMBERS: We have the case of Estate of  
24  Benson.

25              (Document tendered.)



1           THE COURT: Thank you.

2           MR. CHAMBERS: And what the case -- Estate of  
3 Benson -- what it says is that: Finally, Tom contends the  
4 probate court's appointment of co-receivers was an abuse of  
5 discretion.

6           This is at Page 8. The last --  
7 unfortunately, it's two-sided, so -- the last page but the  
8 first -- the front of the last page in the bottom left-hand  
9 corner.

10           Finally, Tom contends the probate court's  
11 appointment of co-receivers was an abuse of discretion  
12 because he was not provided with notice that Renee was  
13 seeking the appointment of a receiver. When, as in the  
14 case here, a party requests the appointment of a receiver  
15 over trust assets, which include real property interests,  
16 Rule 695 of the Texas Rules of Civil Procedure specifically  
17 provides --

18           And then it sets out the notice provision.

19           And then it goes on to determine whether Tom  
20 received proper notice of Renee's request for the  
21 appointment of the receiver, we first examine Renee's  
22 pleadings.

23           And they go on to note where it appears that  
24 they are seeking appointment of temporary receiver. It  
25 states: The day after Renee filed her original petition,

1 the probate court rendered the request -- requested a  
2 temporary restraining order, setting a hearing on Renee's  
3 other requests. Approximately two weeks later, the probate  
4 court held a two-day evidentiary hearing of which all  
5 parties had notice and all parties appeared and presented  
6 evidence regarding Tom's action. At the conclusion of the  
7 hearing, the probate court orally appointed co-receivers to  
8 take possession of the trust property and manage it. That  
9 day, the probate court rendered a written order, appointing  
10 co-receivers; and the order was subsequently amended twice.

11 So the issue is when the relief is requested,  
12 not when there's notice specifically that that additional  
13 hearing is going to be set.

14 As to Mrs. Marshall, not only have they had  
15 notice that it's in the pleadings since we did the last TI  
16 hearing before the Court, but the Court actually never  
17 ruled with respect to the request for appointment of a  
18 receiver as to Ms. Marshall. That order has just been  
19 carried along with the case. It was neither granted nor  
20 denied at the time. So they've been on notice that we were  
21 seeking for Harrier and appointment of a receiver since --  
22 at least three or four months ago before the TI hearing,  
23 because it's been in our pleading as to Ms. Marshall from  
24 that date forward.

25 As to -- so that is notice as to everyone

1 with respect to the Harrier Trust and the relief sought,  
2 which includes appointment of receiver. We don't have to  
3 specifically say: Here's a notice on receiver. Here's a  
4 notice on restraining order. Here's a notice -- we just  
5 set a hearing for all of it.

6 THE COURT: Okay.

7 MR. COX: I don't think any of that is  
8 correct. I think you have to have a hearing. You have to  
9 give notice of the particular hearing that you're setting.  
10 You can't just say: I've plead it at one time in the past;  
11 and, therefore, I can have a hearing on it any time I want.  
12 I mean, that's -- that's the entire purpose of Rule 21 is  
13 to give people proper notice of things. And here -- what  
14 we're dealing with -- what is -- everyone agrees the  
15 harshest remedy in all of Texas jurisprudence -- they gave  
16 us notice at 9:30, less than three full days ago. We do  
17 not have proper and complete notice of this, and it  
18 shouldn't go forward.

19 MR. AKIN: I'll just point out: There's a  
20 procedural problem with what they're arguing as well,  
21 because they're trying to say -- they filed a new lawsuit;  
22 and they didn't have a claim for receivership in that case.  
23 And -- so what they're trying to say is: Oh, in the  
24 separate case -- in probate -- the -401 case -- we had a  
25 claim out there for a receivership. And, you know, there's

1 no way you can use a notice in that case to say somehow it  
2 applies to this brand new lawsuit. And that's what they  
3 did. They added the receivership claim to the new lawsuit  
4 on Monday, and then they gave notice at 9:30 p.m.

5 MR. TRIBBLE: So, Your Honor, under the Texas  
6 Rules of Civil Procedure 4, it tells us how to compute  
7 time. And it says: In computing any period of time  
8 prescribed or allowed by these rules, the designated period  
9 of time begins to -- the designated period of time begins  
10 to run is not to be included -- what it's saying is the  
11 first -- it's exactly what I said earlier. It's telling  
12 us -- you don't count the first day. That's why it doesn't  
13 matter whether we filed the notice at 9:00 a.m., 9:00 p.m.,  
14 or 11:59 p.m., you don't count that day. But the day -- it  
15 says that you do count the last day; and -- so here we are:  
16 Tuesday, Wednesday, Thursday. It's three days' notice.

17 MR. COX: And I don't think that's what it  
18 says. I think Thursday has to be included, which is why  
19 they don't -- we don't have proper notice. That's why we  
20 don't have a full three days' notice. I mean, it's two  
21 days' notice if you say Tuesday, Wednesday and you don't --  
22 I mean, this is Thursday morning. Tuesday, Wednesday,  
23 that's two days; that's not three days. Three days is  
24 tomorrow.

25 MR. TRIBBLE: It says the last day of the

1 period so computed is to be included, unless it's a  
2 Saturday or a Sunday. Thursday is included, so it's three  
3 days' notice.

4 MR. COX: That's -- that's two days. That's  
5 the only --

6 MR. CHAMBERS: Tuesday, Wednesday, Thursday.  
7 That's three days.

8 MR. COX: The notice went out at 9:30 p.m.  
9 Tuesday, Wednesday -- this is Thursday. I don't have three  
10 full days' notice.

11 THE COURT: Yeah. I mean -- it's -- it is  
12 included, and it says -- I'm just reading from the statute  
13 itself -- the last day of the period so computed is  
14 included in the three days' notice unless it's a weekend in  
15 which event the period runs until the end of the next day,  
16 which is not a Saturday, Sunday. So if -- so I think this  
17 would run until the end of -- so you could do it tomorrow.

18 MR. TRIBBLE: And -- we -- Mr. Chambers, I  
19 think, just suggested that. I believe we're -- out of an  
20 abundance of caution, we will argue our application for  
21 receivership tomorrow.

22 THE COURT: Okay.

23 MS. PACHECO: One thing Mr. Akin said -- he  
24 suggested that we didn't file a receivership in the -404.  
25 I believe the Court has our motion for receivership. But

1 we do have a courtesy copy for the Court that was filed on  
2 Monday along with the notice of hearing that was properly  
3 served. It was all filed in the -404. We are not  
4 suggesting to -- the -401, the -402, or the -403  
5 proceedings for our notices of receivership.

6 MR. AKIN: That's not what I said. I said  
7 they filed their receivership on Monday. They couldn't  
8 rely on a prior filing for the case.

9 MS. PACHECO: And we're not. We're filing it  
10 on the -404.

11 THE COURT: Okay. So it is almost 9:40.  
12 Are you ready?

13 MR. TRIBBLE: I'm ready. And I have a  
14 stopwatch.

15 MS. PACHECO: Your Honor, may I move that way  
16 so I can still -- to get out of the way? Is that okay?

17 THE COURT: You can move wherever you feel  
18 comfortable.

19 MS. PACHECO: Okay. I just wanted to make  
20 sure since I was getting into everybody else's space.

21 MR. COX: And Ms. Marshall is ready to  
22 proceed, Your Honor.

23 THE COURT: And just as a practical matter,  
24 don't have microphones. And just be aware that our court  
25 reporter may not be able to hear, and -- so speak up if

1 you're having any trouble.

2 THE REPORTER: Yes, Judge.

3 THE COURT: Thank you.

4 **OPENING STATEMENT**

5 MR. TRIBBLE: Very well.

6 Your Honor, Preston Marshall is here today  
7 asking the Court to enter a temporary injunction and a  
8 receivership -- a receivership tomorrow -- but by way of  
9 background, let's remember how and why we're here. And  
10 it's because Defendants have a continual pattern of --  
11 every time we obtain relief from the Court trying to,  
12 basically, get a standstill as to these assets involved in  
13 the estate, okay -- every time they come up with some --  
14 what I would say is a creative way, to say the least, of  
15 trying to get around the Court's order. As the Court  
16 knows, originally in front of Judge Wood -- to avoid that  
17 TRO, Defendants make an undertaking. They freeze  
18 everything, okay? Later on, of course, we found out  
19 that -- they didn't do that at all. And instead, they --  
20 as to the Harrier and Falcon, they have appointed these  
21 five co-trustees -- and we'll go through the evidence and  
22 why that was wrong. But it was basically the violation of  
23 their undertaking. We then, of course, with this Court,  
24 obtained a temporary restraining order -- later, a  
25 temporary injunction as to Mrs. Marshall that suspended the

1 five co-trustees and prevented her from proceeding in  
2 Louisiana to try and subvert this Court's jurisdiction.  
3 The co-trustees have totally ignored that and are trying to  
4 not only have a Louisiana court undo this Court's order --  
5 suspending them and find that they are properly  
6 appointed -- but also they're asking the Louisiana court to  
7 bless the Wyoming transactions where the Marital Income  
8 Trust was decanted into a Wyoming Trust that had completely  
9 different terms in total contradiction of the requirements  
10 of the will, the estate that's being probated before this  
11 Court.

12 Let's go to slide two. Oh, I have copies of  
13 these slides also, Your Honor, that I can pass out. I'll  
14 pass that out at the end, but -- you know, I have copies  
15 for everybody.

16 Regarding the injunction, here are the  
17 elements required for a temporary injunction: A cause of  
18 action against the Defendant; probably right to the relief  
19 sought, and a probably eminent and irreparable injury in  
20 the interim. And that's exactly what we have here.

21 We brought claims against these co-trustees,  
22 seeking a declaration regarding the invalidity of their  
23 appointments. And also -- we brought a cause of action for  
24 aiding and abetting Mrs. Marshall's breaches of her duties.  
25 I should add that now that they've appeared, we also intend



1 to amend the petition to assert a direct breaches of  
2 fiduciary duty claims against the co-trustees for their  
3 actions that they've taken.

4 But the heart of the matter is, as to the  
5 wrongdoing, is that these co-trustees have entered into a  
6 compensation system that totally violates the terms of the  
7 Harrier and Falcon Trust which require that they be  
8 compensated based upon services actually rendered. And  
9 instead, they've adopted a compensation system that has  
10 nothing to do with the services actually being rendered.  
11 And we'll walk through that in just a second. And because  
12 of the structure of the compensation system, the  
13 co-trustees are self interested in the administration of  
14 the trust. Very simply, the co-trustees get paid more by  
15 withholding distributions to the beneficiary. And -- so it  
16 increased their fees almost double. It almost doubles  
17 their fees over time. And we'll hear evidence of that  
18 later. And -- so they are self-interested regarding this  
19 trust. That's a violation of another requirement of the  
20 trust instruments, which require that any co-trustees  
21 appointed be disinterested persons.

22 And finally as to both of these aspects,  
23 essentially, what Defendants have done is they've --  
24 they're rewriting the trust instruments; and that's an  
25 improper amendment of an irrevocable trust just like the

1 Albritton case in Louisiana, which is dead on point on that  
2 matter.

3               So let's walk through this. Here in Section  
4 6.2(A) of the trust instruments, it requires -- this sets  
5 out exactly how the trustee should be compensated. It  
6 says: The trustee shall be entitled to receive reasonable  
7 compensation for services actually rendered. And in this  
8 case, you'll hear testimony today -- the fees -- the fee  
9 formula that has been adopted by these Defendants provides  
10 fees that are -- they're neither reasonable nor based upon  
11 services actually rendered. And instead of using this  
12 language from the trust, they've -- in the appointment  
13 documents, they have this long, complicated formula; and,  
14 you know, it's a complete rewrite of what was intended by  
15 the settler when he created these irrevocable trusts. And,  
16 in fact, you'll hear testimony that the formula is not  
17 reasonable compensation based upon services actually  
18 rendered because the co-trustees receive a fee that's based  
19 upon a calculation value of assets. It has nothing to do  
20 with work performed. And, in fact, part of the assets are  
21 assets in the Marital Income Trust. It's not even assets  
22 in Harrier and Falcon. And there's absolutely no  
23 requirement that the trustees perform any services at all  
24 to receive their compensation, and -- much less is there  
25 any consideration of what and how much work has been

1 performed in determining the fees.

2 Again, this is the section I referred to  
3 earlier, 6.2(G). It says that the trustee is empowered to  
4 designate co-trustees, but they have to be disinterested  
5 individuals.

6 None of these individuals that Mrs. Marshall  
7 appointed without ever having met or spoke to is  
8 disinterested for the very -- we haven't had discovery yet  
9 because it took time to get service on these Defendants.  
10 There's a motion for expedited discovery pending before the  
11 Court that I think is going to be set on submission.  
12 And -- so we don't have all the evidence yet of why they  
13 picked these particular people to be the co-trustees. And  
14 I suspect there will be further evidence that they're not  
15 disinterested. But just by the formula itself, they --  
16 they have a self-interest in administering the trust and,  
17 in particular, to make sure that they carry out Mrs.  
18 Marshall's wishes that they never make any distributions to  
19 the beneficiary. And -- so if you look at the formula --  
20 there are -- there are three parts to the formula. There's  
21 a cap, but the -- the base formula has three parts. And  
22 I've highlighted Section 1. This is the first piece of it.  
23 It says: There is equal to the sum of these three things.  
24 The first is: 0.3 percent of the calculation value, as  
25 defined below of the trust's interest in the PLM/EPM

1 Marital Income Trust; and the fair market value of  
2 interests in Trof or Ribosome to the extent such interests  
3 have been distributed by the Marital Income Trust to the  
4 Harrier or Falcon Trust, whichever the case may be. And --  
5 so it's not related to services actually rendered. They  
6 get .3 percent of this asset calculation value. The  
7 calculation value is set forth in the -- the last -- the  
8 next to the last sentence where it says the calculation  
9 value is 60 percent of the fair market value of the trust's  
10 corpus adjusted to a present value at 6 percent and based  
11 upon Mrs. Marshall's life expectancy. But more to the  
12 point as to this piece of it, their fee is 0.3 percent.

13           The second thing that's added to their fee is  
14 they get 3 percent of the fair market value of all other  
15 assets. And what this means is -- suppose the income in a  
16 particular year was \$10 million, okay? Instead of getting  
17 .3 percent of that asset -- that \$10 million -- if they  
18 withhold it and keep it in the trust, they get a bonus for  
19 withholding distributions to the beneficiary. They get  
20 paid 3 percent of the fair market value from then on about  
21 \$10 million that they withheld and retained as an asset in  
22 the trust. And we'll hear later why -- how much that's  
23 unreasonable. But you'll hear from Mr. Hancock later --  
24 he's run a number of scenarios to show what would happen  
25 under different situations. And this is one of them. He

1 ran -- these are schedules 10.3 and 10.6 to his report.  
2 You'll hear about this later. But at the end of the day,  
3 the trust terminates either upon the later of the death of  
4 Preston Marshall or when his youngest child turns 35. And  
5 -- so taking that expectancy -- he's run the numbers.  
6 If -- if the trustees were to distribute all the income  
7 every year to the beneficiaries, they would have received a  
8 cumulative total fee of just over \$9 million. However, if  
9 they withhold the money and don't make any distributions to  
10 the beneficiaries, then their fee is, instead, over  
11 \$160 million. Hence, they have a huge incentive to carry  
12 out Mrs. Marshall's wishes and never distribute anything to  
13 the beneficiaries of these trusts.

14           You'll hear from Mr. Robinson who's an expert  
15 in trust fees. And he -- using some of Mr. Hancock's  
16 calculations -- he picked a particular year -- year 2045  
17 under one scenario -- and this is just for one year. Under  
18 the calculation of the fee formula implemented by these  
19 co-trustees, their fee that year would be in excess of 29  
20 and a half million dollars under the compensation formula  
21 that they've all agreed to. In his view, a reasonable fee  
22 would be to charge ten basis points on the first \$100  
23 million of assets, 5 basis points on the next 400 million,  
24 and one basis point for assets over \$500 million. And --  
25 so for this particular year, instead of getting a fee of 29

1 and a half million dollars, a reasonable fee would be  
2 \$821,000. You'll hear more about that later. At the end  
3 of the day, Mr. Robinson's opinions are that the purported  
4 fee and the employment documents are excessive and  
5 unreasonable. It's beyond any measure of -- in any way  
6 being competitive with market rates. And more importantly,  
7 the fee bears no relation to the work to the extent --  
8 being expended by these purported co-trustees. And the fee  
9 is definitely not in the beneficiary's best interest. He  
10 also believes that the purported fee will seriously deplete  
11 the amount of future income distributions to the  
12 beneficiaries. And this is the *Albritton* case where you  
13 have an irrevocable trust under Louisiana law, you know,  
14 modification of the trust by a party other than the settlor  
15 is an absolute nullity.

16 And -- so that's what we have here. All  
17 we're asking for the Court to do is basically enter the  
18 same type of temporary injunction that the Court has  
19 already entered as to Mrs. Marshall. Even though the Court  
20 found that the co-trustees were suspended, they're still  
21 purporting to act as authorized trustees of these trusts in  
22 Louisiana, as we'll see. But all -- all we're trying to do  
23 is make effective as them -- clearly make effective as to  
24 them -- the same rulings the Court has already made as to  
25 Mrs. Marshall.

1           And there's been a lot of talk about whether  
2   this temporary injunction would be an anti-suit injunction.  
3   And it does -- it will have the effect of stopping them  
4   from acting as authorized trustees in any capacity, whether  
5   in litigation or administration of the trust, banking,  
6   investment, distributions. And -- so, you know, the  
7   argument proves too much from the other side. They're  
8   being suspended as trustees. They can't act in any  
9   capacity. We're not singling out litigation activities.  
10   We don't want them doing anything as purported trustees of  
11   these trusts. Further, though, as the Court knows, the law  
12   is an anti-suit injunction is absolutely appropriate when  
13   necessary to protection this Court's jurisdiction. And  
14   that's exactly what we have here. If the -- this was --  
15   here's a little history as to one of the lawsuits in  
16   Louisiana. This is Plaintiff's Exhibit 31 -- is a copy of  
17   Ms. Marshall's First Amendment Petition. And she brought  
18   it by herself. It was filed September 6th of 2016.  
19   Tellingly that petition had no mention of the Wyoming  
20   transactions which is, you know -- would be normal because  
21   why would it -- you know, it's about these, you know,  
22   Louisiana trusts, Harrier. If you -- then on January 10  
23   after the appointment of the co-trustees, two of those  
24   trustees, Mr. Alexander and Mr. Johnson, joined in this  
25   lawsuit. And they filed a second amended petition. In

1 this, they added the claims regarding the Wyoming  
2 litigation.

3 Mack, can you pull up Plaintiff's Exhibit 16.  
4 And scroll down. It's on the next page.

5 So when they amended the petition --

6 Keep going.

7 -- they added --

8 Next page.

9 They added at the very end --

10 Keep going. Here it is.

11 Look at Paragraph 19. They added this to the  
12 petition. The trustees of the trust are aware of the entry  
13 of a judgment in an action in Wyoming. The judgment that's  
14 attached hereto is Exhibit B. The trustees respectfully  
15 ask this Court to examine the Wyoming judgment and declare  
16 whether it is entitled to full faith and credit. So it's  
17 Harrier; and these trustees are bound by it, okay? And why  
18 did they do that? And then further in the prayer for  
19 relief, they -- they asked the Court to specifically find  
20 that those Wyoming transactions are entitled to full faith  
21 and credit.

22 Go back to the slides, Mack.

23 And -- so the reason they're asking for  
24 that -- and by the way, this was not an accident. This is  
25 the declaration that Mr. Johnson, one of the co-trustees,



1 submitted to this Court to try and defeat our application  
2 for the temporary injunction against Mrs. Marshall. In  
3 other words, they're working together to try and prevent us  
4 from getting any relief. And this has a list of the  
5 activities that the co-trustees supposedly went through in  
6 the first quarter of 2017. Item No. 8 was -- they agreed  
7 to join in the motion to grant full faith and credit in  
8 Louisiana to the Wyoming judgment. By the way, the Wyoming  
9 judgment -- that that's ex parte judgment that they  
10 obtained, giving the beneficiary no notice. And the reason  
11 they want this finding is that there's a statute in  
12 Louisiana -- revised statute 2233(a). And it says that a  
13 trustee may apply for instructions. And then it basically  
14 says: An order of a proper court issued pursuant to such  
15 an application shall be full authority to act in accordance  
16 thereunder and a trustee shall fully -- be fully protected  
17 from all claims of any person who has or may subsequently  
18 acquire an interest in the property.

19           So they're trying to get this instruction.  
20 And then they're going to come into this court and say:  
21 The breach of fiduciary duty claims against Mrs. Marshall  
22 and anybody else are precluded by this statute because they  
23 got a finding out of the Louisiana court. It's -- goes to  
24 the very heart of this court's probate jurisdiction over  
25 the estate. They're trying to have another court decide

1 what is only properly decided by this Court. And they've  
2 filed a motion for summary judgment as to this matter. And  
3 they filed that on May 10 of this year. The timing of  
4 their filing -- they've -- is strange. They filed it on  
5 May 10 because on May 9<sup>th</sup>, Judge Comstock sent an e-mail  
6 to the parties that -- that said: Judge Butts has asked me  
7 to request a proposed order with fact findings from Sarah  
8 Pacheco. It says: This is not to indicate how Judge Butts  
9 may rule, but she wants some guidance in her drafting,  
10 okay? So after the Court asked for Plaintiff to submit a  
11 proposed order, the very next day, they filed their motion  
12 for summary judgment in Louisiana. And further, they've  
13 been proceeding to try and expedite the hearing on that.  
14 And this is a letter from Adams & Reese, the counsel in  
15 Louisiana for the co-trustees. And it says: After the  
16 hearing, we were not able to agree with opposing counsel on  
17 a date for a hearing on our motion for partial summary  
18 judgment. In addition, we have learned that Preston  
19 Marshall's motion for summary judgment contesting the  
20 appointment of the co-trustees filed in the Texas probate  
21 court has been set for hearing with other motions on  
22 November 2<sup>nd</sup> and 3<sup>rd</sup>.

23 That's one of the summary judgment motions  
24 we're going to argue tomorrow. They tell the Court  
25 consequently: We respectfully request the Court to either

1 set our motion for partial summary judgment for hearing  
2 before November 2<sup>nd</sup> or hold a telephone status conference  
3 to set a hearing date prior to November 2<sup>nd</sup>.

4           So, I mean, they're clearly trying to subvert  
5 this Court's jurisdiction and get around not only the  
6 matters that you should -- are entitled to decide but also  
7 what you've already decided in your prior rulings in the  
8 temporary injunction order. And they follow up: Time is  
9 of the essence. And at the end of the day, all we're  
10 asking, Your Honor, is we now have jurisdiction over these  
11 co-trustees. There's personal jurisdiction because they  
12 are trustees of a trust that has Texas beneficiaries. The  
13 law is absolutely clear on that. We've cited to you  
14 before. It's in our brief. And in addition, they traveled  
15 to Texas to meet with Ms. Marshall to conduct trust  
16 business. So they're -- they're actually -- there's even  
17 specific jurisdiction because they're working in Texas to  
18 administer the trust.

19           And -- so for all those reasons, we simply  
20 ask that you enter -- the requested temporary  
21 injunctions -- it's very -- essentially the same as to  
22 Harrier and Falcon as the findings and the temporary  
23 injunction you've already entered with regard to Mrs.  
24 Marshall. Thank you.

25

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21

25

1 the exact same way. But by the time we got to the end of  
2 it, we didn't hear anything else about the undertaking.  
3 And the reason we didn't hear anything about the  
4 undertaking is because when we walked through the  
5 transcript -- and we'll be happy to do it again -- but when  
6 we walked through the transcript, it was absolutely clear  
7 that what the undertaking dealt with were the shares that  
8 were in the MIT. It didn't deal with or identify anything  
9 or any other entity. In fact, you may recall we had a  
10 slide that had 72 different entities which are all the  
11 different Marshall entities. They tried to portray it as  
12 an absolute standstill, but it wasn't -- and at the end of  
13 that TI, that entire issue had completely dropped out  
14 because what the undertaking was about was the 91,000  
15 shares that were in the MIT that were there at the last TI  
16 that are still there at this TI.

17 Now, even Preston's expert agrees that not  
18 meeting with the co-trustees or having Mr. Hunter go and  
19 find the co-trustees, select the co-trustees was not a  
20 breach of fiduciary duty. But that is a fine way to  
21 delegate the power that she had. In addition -- this is  
22 another quote where it says: And you don't think there's  
23 anything wrong with the action Ms. Marshall took in asking  
24 the Hunter Law Firm to interview candidates? Correct.

25 That seems like a good-faith action by Mrs.

1 Marshall. All right. And that is important because what  
2 is goes to is the good faith or the absence of bad faith by  
3 Mrs. Marshall. She exercised the specifically enumerated  
4 powers that she had as the trustee in the trust instrument.  
5 She delegated them out to Mr. Hunter, and there is nothing  
6 wrong with that.

7           The next issue is irreparable harm. An  
8 injury is irreparable if the injured party cannot be  
9 adequately compensated in damages or if the damages cannot  
10 be measured by any specific pecuniary standard. Again,  
11 trustee compensation is monetary. It is a calculable  
12 number. Before -- in the last TI, I think Your Honor  
13 focused on the shares -- the unique aspects of the Trof  
14 shares or the Koch shares, that they were a unique asset.  
15 That's not what we're dealing with right here. We are  
16 dealing with fee, and a fee is absolutely monitorially  
17 calculable and is not something that is subject to a  
18 temporary injunction.

19           Did you have a question?

20           THE COURT: (Shakes head.)

21           MR. COX: Secondly, one of the things that we  
22 heard at the TI level is -- I didn't hear it in this  
23 opening, but I heard it at the TI level -- is that we don't  
24 know what the capacity is of these co-trustees to satisfy a  
25 judgment or anything like that. I think that's a little

1 bit misleading because they have plead aiding and abetting,  
2 co-conspirators, that Ms. Marshall is doing this and  
3 controlling and is the puppet master. And anything that  
4 they are asserting against the co-trustees, they are also  
5 asserting against Ms. Marshall. And there's plenty of  
6 evidence that Ms. Marshall has the financial capacity to  
7 cover any judgment. So if it is monetary, if there is the  
8 capacity to cover it, it is not a basis upon which to grant  
9 a TI. It is different than the other.

10 Now, there's no eminent harm. Texas Supreme  
11 Court has interpreted this rule to require the order to set  
12 forth the reasons why the Court deems it proper to issue  
13 the writ to prevent injury to the applicant in the interim.  
14 That is the reason why the Court believes the applicant's  
15 probable right will be endangered if the writ does not  
16 issue. And the example that they gave of eminent harm was  
17 a slide that said in 2045 -- 28 years from now, this is how  
18 much their fee is going to be. That's absurd. That's like  
19 a prima facie basis to deny a TI. Something that could  
20 possibly -- maybe -- happen in 28 years. That's not a  
21 basis to grant a TI. That's not eminent. That's not  
22 irreparable because it's a dollar amount.

23 Now, there's also no irreparable harm because  
24 the Harrier Trust and the Falcon Trust have paid no fees.  
25 Your Honor entered an injunction that said that Ms.

1 Marshall can't pay any of the trustee's fees out of the  
2 trust. She hasn't done that. She's not doing that. She's  
3 not paying them any money. There's no money that's getting  
4 paid by virtue of Your Honor's already existing temporary  
5 injunction. We've already talked a little bit about it, what  
6 could happen, what might happen, what maybe future could.  
7 That's all speculation. That's not a basis to grant a  
8 temporary injunction. And number three, the TI order  
9 enjoins Mrs. Marshall and her agents and representatives.  
10 And this is important because Mrs. Marshall -- you're going  
11 to hear evidence that the only person -- the sole person  
12 that has control over the checkbook for Harrier and Falcon,  
13 that has control over the stock certificates for Trof and  
14 anything that matters is Mrs. Marshall. There's not a  
15 single co-trustee on a bank account on anything anywhere.  
16 Processes were started, but nothing was done. Nothing has  
17 been done. The co-trustees cannot move a penny of the  
18 money in Harrier or Falcon anywhere.

19           There is no emergency. The 14<sup>th</sup> JDC hasn't  
20 commenced anything on the merits with respect to the  
21 co-trustee appointments and the co-trustee compensation.  
22 The 14th JDC hasn't ruled on the co-trustee request to  
23 expedite. And Preston has taken an inconsistent position  
24 which is what caused or persuaded the 14<sup>th</sup> JDC to reverse  
25 its position with respect to the state.



1           Now, the unclean hands -- I'm not going to  
2 belabor it. We've already talked about it, and I know that  
3 the Court knows what the contents are going to be because  
4 we addressed in the motion in limine and have seen earlier.  
5 But unclean hands is a defense. If you're going to come  
6 into the court and you're going to ask the Court to do  
7 equity on your behalf, you have to have clean hands. You  
8 have to have done equity in the past. I do not believe  
9 that is the case with Preston Marshall.

10           Now, ultimately in the Harrier Trust -- and  
11 also the Falcon Trust, but I just cited the Harrier Trust  
12 here for Your Honor -- it says that the governing law of  
13 the trust shall be the Louisiana Trust Code. The Louisiana  
14 law is what applies. And then it says that the trustee  
15 shall apply to the 14<sup>th</sup> Judicial District for Calcasieu  
16 Parish, Louisiana, for instructions regarding any question  
17 that might arise regarding the administration of the trust.

18           That's exactly what the co-trustees did.  
19 They applied for confirmation of their appointment. There  
20 was a challenge as to the jurisdiction over it, and the  
21 Louisiana court asserted jurisdiction. This is what the  
22 co-trustees are required to do by the trust instrument; and  
23 more importantly, they initiated that lawsuit first. They  
24 were the first ones to file. Given that it is a Louisiana  
25 trust, given that they filed first, given that the assets

1 can't move anywhere -- the assets are protected. They're  
2 safe. Which is sort of what I think the thrust of their  
3 main complaint is is what could -- may happen to the  
4 assets. You've got a TI in place that locks those assets  
5 in place, giving the logistics of it. So now -- given the  
6 fact that it's a Louisiana trust subject to Louisiana law,  
7 the proper court jurisdiction, which is a unique procedural  
8 animal in Louisiana law -- the assets are safe -- the Court  
9 should give deference -- this Court should respectfully  
10 give deference to the Louisiana court to allow the  
11 Louisiana court to make the rulings that it thinks is  
12 appropriate with respect to the Louisiana trust.

13 Now, if you were to go the additional step  
14 and you were to enjoin the co-trustees, then what you've  
15 done is you have -- I mean -- absolutely done an anti-suit  
16 injunction because everybody on one side of the V in that  
17 case in Louisiana is enjoined from doing anything, not just  
18 from acting as a trustee, distributing money, taking acts  
19 as a trustee, but from doing anything in the lawsuit  
20 confirming their appointment. You are locking them down  
21 and saying: You can't do anything. And that's what the  
22 cases say, that you look at what actually goes on. And you  
23 cannot evade it by addressing the order of the parties.  
24 And if the weight of authority in holding -- if the  
25 injunction would be barred, this should also bar an

1 issuance of declaratory judgment that would have the same  
2 effect as an injunction. What you do is you look at what's  
3 actually going on. And when you enjoin Mrs. Marshall and  
4 you enjoin the co-trustees from doing anything in the  
5 litigation, not just from doing things as a trustee,  
6 distributing money, making decisions -- that is what  
7 constitutes under the case law an anti-suit injunction.

8 Now, I think I've used 11 minutes, so I have  
9 9 minutes left. And Mr. Akin is going to deal with the  
10 last 9 minutes.

11 **OPENING STATEMENT**

12 MR. AKIN: Thank you, Your Honor.

13 I wanted to address a couple of things  
14 quickly. I heard them say -- number one, they've got this  
15 suggestion that the formula -- the trustee compensation is  
16 a nullity because it somehow changes the language of the  
17 trust agreement. And I think when you listen to even what  
18 their experts have to say on that, that argument is going  
19 to go ahead. And reason is because you're going to hear  
20 either by us calling them by deposition or on  
21 cross-examination that it's commonplace. It always happens  
22 that there is a fee schedule -- a formula -- that goes into  
23 place before the trustees start to do the work. And -- so  
24 they somehow got this argument that anytime you put the  
25 compensation first and then somebody starts to work, it's a

1 nullity. And it just proves too much because the  
2 institutional trustees on both sides are going to confirm  
3 that that's just the way it is. And -- so what we really  
4 have a greater disagreement about is the way they interpret  
5 the formula and what's reason and not in this unique  
6 circumstance.

7           The other argument that I want to touch on  
8 that just seems really odd to me is they want to argue that  
9 this is, essentially, more than just an anti-suit  
10 injunction and that somehow that makes it not an anti-suit  
11 injunction. I mean, if you heard them, they said: Yeah.  
12 It stops the lawsuit. But it does other stuff, too. And  
13 they've really admitted there's an anti-suit injunction  
14 component to this. I just don't think there's any dispute  
15 about that.

16           Mr. Cox touched on these points here. I  
17 think the main point is before July 12<sup>th</sup> -- before the  
18 Court signed its order -- Mrs. Marshall was moving forward  
19 and treating these co-trustees as real co-trustees. That  
20 was the whole point of it. The Court signed on order, and  
21 things stopped. And these things just aren't happening.  
22 She's complying with the order. And on October 6<sup>th</sup>, when  
23 we had the TRO hearing, I heard something new that day that  
24 they hadn't complained about before; and that was this  
25 declaratory judgment claim in the 14th judicial district

1 relating to the court taking credit. And -- so what Mrs.  
2 Marshall has done -- we all went back and thought about  
3 that -- and she sent a letter -- authorized her lawyer to  
4 send a letter to Mr. Chambers and to their Louisiana  
5 counsel -- Mr. Chambers is in the Louisiana lawsuit as  
6 well -- saying give us -- will you consent to us amending  
7 our petition to drop that full faith and credit claim.  
8 There's been no response to that. But, you know,  
9 apparently you need to leave a court like you would in  
10 federal court. And -- so she's trying to get that claim  
11 out of that lawsuit, and the only thing standing in her way  
12 is the consent of the people who want you to -- and somehow  
13 enjoin and are still citing that as a basis. And the only  
14 thing left then is you've got these two co-trustees who had  
15 the claim as well. But I think that's covered already by  
16 the Court's order. Because the only -- they don't have any  
17 standing to, you know, get anything done with respect to  
18 that order. It would have to be on behalf of the Harrier  
19 Trust which consented to that transaction in Wyoming, but  
20 their powers have already been suspended by the Court. So  
21 I think Ms. Marshall evidencing her intent to drop that  
22 claim resolves that issue.

23           In new developments here, there really hasn't  
24 been anything other than the fact that there are  
25 co-trustees that are out there that are still -- have been

1 doing stuff after the Court's order in Louisiana. And the  
2 reason they weren't doing anything -- I assume -- well,  
3 they couldn't do anything because really -- the reality is  
4 Mrs. Marshall controlled everything. She has the  
5 documents. She has the certificates. She has the bank  
6 accounts. She didn't call them up. There were no  
7 meetings. There was just -- nothing has happened other  
8 than the lawsuit they want to enjoin. Now, it's -- it's a  
9 bit of an odd situation we find ourselves in because the  
10 Court entered this TI, and they weren't parties at that  
11 time. But now we've got this prohibition here that we're  
12 prohibited from taking any action in conjunction with the  
13 co-trustees regarding the Falcon or Harrier Trust, but  
14 they're our codefendants -- I mean, it almost seems to  
15 prohibit a joint defense which would -- it would be unheard  
16 of; and I don't think that was the intent to do that. But  
17 the bottom line is that that order is out there; and, you  
18 know, they're taking a very broad interpretation of it.  
19 They argued at the last hearing that somehow -- coming down  
20 and defending ourselves in this case is a violation of it.  
21 And -- so we just have to -- our view is to -- the way this  
22 is drafted to comply with this -- we don't think we have --  
23 we have the ability to control the co-trustees, but we  
24 can't even try. We've just got to stay out of it, and  
25 they're going to do whatever it is they're going to do

1 through their counsel.

2           You know, I want to point out the 14<sup>th</sup> JDC.  
3 When you step back and look at the context -- the way this  
4 all started, from my perspective, is -- this most recent  
5 round is -- they came to the Court saying: Gee, you've  
6 really got to expedite the November 2 summary judgment  
7 hearing. Move it up, because it's going to get -- get  
8 moved up in the 14<sup>th</sup> judicial district. And as we sit  
9 here today, that didn't happen. You've got a court in the  
10 14<sup>th</sup> judicial district that has expressed its view that  
11 thinks it has mandatory jurisdiction. It's set out in the  
12 record. But everything so far indicates a very deferential  
13 respect for court. And every time they say there's some  
14 big, horrible thing that's going to happen out there like  
15 the 14th judicial district is going to speed it up and  
16 they're going to move their summary judgment ahead of  
17 yours, Judge, here we are. It hasn't happened. And -- so  
18 nothing like that has come to fruition yet, at all. And --  
19 so, you know, from our perspective, what's happened here  
20 is, you know, the Court didn't give Preston what he wanted  
21 in the expedited, so he came back; and he tried to do it  
22 another way. So he -- just give me a TRO to enjoin it.  
23 Now -- you know, just give me a receivership, anti-suit  
24 receivership, essentially, is kind of what we view it as.  
25 And there are different types of cases out there. I mean,

1 I think you see some cases where parties will take a  
2 conservative approach and they really have the appellate  
3 record in mind. I think this is a pure -- a client-driven  
4 thing. But what we see here is very aggressive, pushing  
5 the envelope in terms of the relief they want. We're  
6 starting to see that kind of come to fruition. I always  
7 wondered how in Louisiana there could be this contempt  
8 finding against, you know, this elderly person who had been  
9 a family friend for not going out and taking, you know --  
10 filing lawsuits against the Hunter firm to get documents.  
11 Well, it turns out the Louisiana court of appeals addressed  
12 that and said, you know, you can't -- you can't hold  
13 somebody in contempt. They recently reversed that ruling  
14 as well as the reversal of the granting of the motion to  
15 compel. You know, they want to keep talking about that  
16 hearing in front of Judge Wood. You know, here's what they  
17 said to Judge Wood: We'd urge the Court -- you know, you  
18 have the ability and the authority to continue to consider  
19 the TRO. Of course, he signed it; and mandamus followed.  
20 Again, it's a -- there's a client-driven pushing of the  
21 envelope we think in terms of relief.

22 Another big red flag -- I've never seen --  
23 I've seen inconsistent positions in litigation. I've seen  
24 somebody say something in one court and come into another  
25 court and say something different. I've never seen --



1 other than this one time, this one case somebody -- during  
2 a pending appeal -- come back to the same trial court and  
3 make an inconsistent argument. We think that's another red  
4 flag to consider in terms of what's going on here and where  
5 they're trying to push the Court and whether they're really  
6 keeping the appellate perspective in mind and in terms of  
7 what they want this Court to do. You know, they clearly  
8 were saying to the appellate court: Hey, uphold Judge  
9 Butts; because the co-trustees aren't bound and now they  
10 want to come back here and say: But bind the co-trustees.  
11 I mean, who does that?

12 And I think -- we'll get into a little bit  
13 more to -- you know, some of this other stuff. But I just  
14 want to point out, I mean, we have an oral argument that's  
15 set in this case; and I'm not trying to, you know -- about  
16 that or anything like that. But anybody who's a  
17 sophisticated lawyer would know there's -- it's on the  
18 court of appeal's radar screen already, and there's some  
19 risk. And the question that comes to my mind is in that  
20 context, why in the world would you come down and ask a  
21 Court on the eve of that to do something even more  
22 dramatic? Oh, Judge, just slap a receivership on Harrier  
23 and Falcon; apply Texas law to it -- and we'll get into the  
24 receivership stuff more -- but, oh, by the way, Louisiana  
25 is a Napoleonic Code and they want to have the concept of

1 receivership under Louisiana law. There's a specific  
2 statute. They've got other ways they kind of accomplish  
3 the same things. But, you know, I just think these are all  
4 red flags to consider in terms of, you know, why  
5 strategically would somebody come down and push the  
6 envelope that much and keep going further and further and  
7 further.

8               So, again, we just ask the Court to listen to  
9 the evidence and look at the big picture and think about  
10 whether there's -- whether there's overreaching here;  
11 whether there's really anything that's happened that  
12 requires this Court to expand upon what it did before,  
13 which was suspend all the powers of the co-trustee and  
14 impose very strict injunctive relief on Mrs. Marshall, the  
15 person who has control over everything, so thank you.

16               THE COURT: Thank you.

17               Mr. Weber?

18               **OPENING STATEMENT**

19               MR. WEBER: May it please the Court.

20               And, again, subject to my clients' special  
21 appearance, I will be brief. Obviously Mr. Cox and  
22 Mr. Akin hit points that my clients absolutely agree with.  
23 If Ms. Marshall, who controls everything, is already  
24 restrained from acting, then it's unnecessary. It's  
25 superfluous to try to prevent my clients from doing

1 anything. I will point out with regard to the special  
2 appearance that despite Mr. Tribble's comments to the  
3 contrary, the co-trustees have not appeared in this case.  
4 He just glosses over the fact that we have a special  
5 appearance on file -- hasn't been heard yet. And I don't  
6 want my -- the fact that I'm not objecting to his  
7 characterization of what allegedly happened as some  
8 concession that I believe or agree with anything he said.  
9 That's the matter that this Court is going to decide at the  
10 hearing on the special appearance.

11 But my clients are -- are very concerned  
12 about this Court preventing them from moving forward in the  
13 Louisiana proceeding where that lawsuit was -- as evidence  
14 will show -- filed back in January well before this lawsuit  
15 in this instant case. And they filed that lawsuit to  
16 confirm their appointments as successor trustees in the  
17 only court that has jurisdiction over that. You saw the  
18 slide of -- I think it's 6.2 or H of the -- the trust. The  
19 14<sup>th</sup> Judicial District Court in Louisiana is where that  
20 issue is to be resolved. So my clients are very concerned  
21 about not being able to move forward and have their  
22 appointments confirmed in light of this Court's prior  
23 orders. So we will like some clarification on that issue  
24 at the end of the day. But, otherwise, I'm going to give  
25 the Court some time back and thank you. I appreciate it.

1 THE COURT: Thank you, Mr. Weber.

2 It's 10:25, I believe. But opening  
3 statements have closed.

4 And would you like to call your first  
5 witness?

6 MR. TRIBBLE: We would, Your Honor.

7 MR. CHAMBERS: I call Preston Marshall to the  
8 stand, Your Honor.

9 *(Witness duly sworn.)*

10 MR. PRESTON MARSHALL: I do.

11 THE COURT: Thank you.

12 MR. CHAMBERS: Your Honor, as a housekeeping  
13 matter to try to speed things along, we have notebooks for  
14 the Court and for opposing counsel.

15 *(Documents tendered.)*

16 **PRESTON MARSHALL,**  
17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. CHAMBERS:

20 Q. Will you introduce yourself for the record?

21 A. Preston Marshall.

22 Q. Mr. Marshall, how are you presently employed?

23 A. By Rusk Capital and Rusk Energy.

24 Q. And in your current businesses, have you been  
25 trying to repair the problems that were created by having

1 your books and records taken from you?

2 A. Yes.

3 MR. COX: Objection; relevance.

4 THE COURT: Overruled.

5 Q. (BY MR. CHAMBERS) How did -- how did that occur?

6 A. Maybe -- maybe time frame -- context -- if you  
7 want -- maybe narrow the question down.

8 Q. Okay. What -- what happened -- just -- I'm trying  
9 to give some general background for the Court. Where were  
10 you employed prior to your current employment?

11 A. At MarOpCo.

12 Q. And what is MarOpCo?

13 A. MarOpCo is our, essentially, our family office.

14 Q. And for how many years have you had some working  
15 relationship with MarOpCo?

16 A. Well, MarOpCo -- we -- we started MarOpCo in -- it  
17 was either '98 or '99. So, obviously, since that time  
18 through 2015 and then with Marshall Petroleum, which is now  
19 called Trof, Inc., prior to that time in 1996.

20 Q. So prior to your father's death, approximately,  
21 how much time did you work with him at MarOpCo?

22 A. I worked with him during the last ten years of his  
23 life and then, obviously, continued on after that.

24 Q. And after he passed away, what was your first  
25 position that you held at MarOpCo?

1 A. After he passed, it was president.

2 THE REPORTER: I'm sorry? I didn't hear you.

3 THE WITNESS: After he passed, it was  
4 president.

5 Q. (BY MR. CHAMBERS) As president of MarOpCo, were  
6 you also involved in the family's trust in businesses?

7 A. Yes. I was also trustee.

8 Q. Concerning the Harrier and the Falcon Trust, did  
9 you supervise administration of those trusts?

10 A. Yes, I did.

11 Q. Where did you supervise administration of those  
12 trusts?

13 A. In our offices in Houston.

14 Q. And until what point in time were you  
15 administering the Harrier and Falcon Trust?

16 A. Through June of 2015.

17 Q. In June of 2015, what happened that changed?

18 A. I was terminated and locked out of my office.

19 Q. And the books and records of all the trusts and  
20 your personal books and records, what happened to those?

21 A. They were removed from the office.

22 Q. But up through that point in time, where was the  
23 primary administration of the Harrier and Falcon Trust?

24 A. Here in Houston.

25 Q. Have they ever been administered in Louisiana?

1 A. No.

2 Q. Had there ever been a trustee in Louisiana?

3 A. No.

4 Q. Had the -- where had the trustee for the Harrier  
5 and Falcon Trust resided?

6 A. In Dallas.

7 Q. Who was the sole trustee of those trusts?

8 A. At that time, my mother was.

9 Q. And up through what point in time was your mother  
10 the sole trustee of the trust?

11 A. I guess after the fall of '16 -- 2016.

12 Q. And what did she purport to do at that time?

13 A. Purport to appoint five people from Lake Charles.

14 Q. So prior to the time that -- of this purported  
15 appointment of trustees in the Harrier and Falcon Trust,  
16 how long had your lawsuit here in Houston involving your  
17 father's estate and your mother's actions been pending?

18 A. So for over -- that was for over a year by that  
19 time, including Harrier and Falcon.

20 Q. Prior to the time your mother filed any action in  
21 Louisiana, was the pleading that you had filed concerning  
22 Harrier and Falcon adding them as parties to this probate  
23 litigation, was it on file?

24 A. It was, yes.

25 Q. So there was no pending litigation in Louisiana

1 prior to the time that --

2 Let me withdraw the question.

3 Was there any pending litigation in Louisiana  
4 prior to the time that you filed your action here involving  
5 Harrier, Falcon and a number of other trusts?

6 A. No, there was not.

7 Q. Subsequent to your filing your lawsuit here  
8 involving Harrier and Falcon and the other trusts that are  
9 involved in the -- what's known as the -401 action, was  
10 there Louisiana litigation of any kind concerning those  
11 trusts -- the Harrier and Falcon trusts specifically?

12 A. No. There was not any.

13 Q. What were the general duties of administration  
14 that you undertook in Houston for Harrier and Falcon?

15 A. Generally -- generally, it's booking -- books and  
16 records, tax return preparation and facilitating  
17 distributions through the trust.

18 Q. And was that the same work that you performed for  
19 the other entities that are involved in these -- in the  
20 -401 action in probate court now?

21 A. Yes, that's correct.

22 Q. Just -- in answer to some of what we've heard so  
23 far this morning in opening, I'd like to ask you a couple  
24 of questions: First of all, the Adam and Reese firm, who  
25 did they purport to represent currently in Louisiana?



1 A. My understanding is the co-trustees.

2 Q. And what is the basis for your understanding? You  
3 involved in any litigation?

4 A. Yes. They're -- if my memory is correct, they are  
5 representing the co-trustees in all of the Louisiana  
6 litigation surrounding Harrier and Falcon.

7 Q. And I'm just trying to place, for the record, your  
8 personal knowledge of those events. So are you involved in  
9 litigation concerning Harrier and Falcon in Louisiana?

10 A. Yes. I'm a party.

11 Q. And was that litigation filed subsequent to the  
12 litigation where -- we are here about in the -401 action in  
13 probate?

14 A. Yes. It was definitely filed subsequent to the  
15 -401.

16 Q. Prior to the time that Adams & Reese purported to  
17 represent the trustees in Louisiana, prior to that time,  
18 did we -- and by "we," I mean me on your behalf -- receive  
19 any correspondence from Adams & Reese?

20 A. I believe so, yes.

21 Q. And at that time, did they purport to be  
22 representing a different party?

23 A. I don't remember --

24 MR. COX: Objection, Your Honor. I think  
25 that's the best evidence rule or hearsay. I mean, we're

1 talking about documents that we don't have with us in front  
2 of the Court right now.

3 MR. CHAMBERS: He's allowed -- Your Honor,  
4 he's allowed to testify to his memory about what he's  
5 received over time. I don't have to put --

6 MR. COX: Not -- not -- not if it's hearsay.  
7 I can't talk to you about what -- is a statement from an  
8 out-of-court -- I mean, if Adams & Reese wrote a letter to  
9 someone, that's a statement. That's an out-of-court  
10 statement. They're not here. The document's not here.  
11 There's nothing that gets around hearsay. It's absolutely  
12 hearsay and inadmissible.

13 MR. CHAMBERS: I haven't asked him anything  
14 about the contents of the document. I asked him who it was  
15 from.

16 THE COURT: Well, you asked who -- who was  
17 purporting to represent before he purported to represent  
18 the co-trustees.

19 So I'm going to sustain the objection.

20 MR. COX: Thank you, Your Honor.

21 Q. (BY MR. CHAMBERS) Presently -- have you ever  
22 taken the position with Adams & Reese that they represented  
23 you previously?

24 A. Yes, they did.

25 Q. And did you do that in writing?

1 A. Yes, we did.

2 Q. And was that -- were any requests made of you, by  
3 Adams & Reese, prior to the time of their representing the  
4 co-trustees?

5 MR. COX: Objection. Calls for hearsay.  
6 That question is: Did Adams & Reese make representations  
7 to you?

8 THE COURT: Sustained.

9 Q. (BY MR. CHAMBERS) There was also a comment made  
10 by counsel about Mr. Hunter's selection of the co-trustees.  
11 Do you recall that argument?

12 A. I do.

13 Q. At the time Mr. Hunter made these supposed  
14 selections of the co-trustees, was there pending litigation  
15 against them here in Harris County?

16 A. Yes, that's correct.

17 Q. Had you brought litigation against Mr. Hunter by  
18 that point in time?

19 A. Yes.

20 Q. And -- so while he is supposedly independently  
21 going through this selection process of trustees, you were  
22 suing him?

23 MR. COX: Objection, Your Honor. Leading,  
24 lack of foundation. He doesn't know anything about what  
25 Mr. Hunter was doing when, why or how.

1 MR. CHAMBERS: Well, let me re-ask the  
2 question.

3 Q. (BY MR. CHAMBERS) Was it represented here in  
4 court today, in your presence, that Mr. Hunter selected the  
5 co-trustees?

6 A. My memory was -- it was recruiting and  
7 interviewing.

8 MR. COX: Objection, your Honor. I think  
9 that what I said was "interviewed." And that's what it  
10 was. Mr. Hunter was -- with respect to the opening slide  
11 -- delegation and interviewed is what I said.

12 Q. (BY MR. CHAMBERS) With respect -- whatever  
13 position he had with respect to selecting the co-trustees  
14 and the fee arrangements -- whatever input he had on  
15 that -- when he did that work, were you suing him?

16 A. Yes.

17 Q. And for what amount, roughly, had your experts  
18 calculated the damages to you were in that lawsuit?

19 A. It was in the neighborhood of \$400 million on the  
20 upside.

21 Q. Are you familiar with the temporary injunction  
22 issued by this Court?

23 A. Generally, yes.

24 Q. And in the temporary injunction, what is your  
25 understanding of what the Court did with respect to the

1 trustees in purported Louisiana co-trustees' powers?

2 MR. COX: Objection. The document speaks for  
3 itself; and, quite frankly, no one is more familiar with  
4 the Court's injunction than the Court itself.

5 MR. CHAMBERS: He can testify to his  
6 understanding of the document, which is what I asked him.

7 MR. COX: I mean, you're the one who decides  
8 this. It's your injunction. I mean, why does he get to  
9 read it? There's 2,000 people in this courthouse today  
10 that can read and read your injunction and express to you  
11 their opinion about what you meant. You're the one who  
12 knows. They're in the best position to do it. He has no  
13 foundation, no personal knowledge, no Juris Doctor. He's  
14 not a person to offer testimony on the subject.

15 THE COURT: I'm going to -- I'm going to  
16 allow the question.

17 MR. COX: Thank you, Your Honor.

18 Q. (BY MR. CHAMBERS) What was your understanding of  
19 what happened to the co-trustees' powers under the  
20 temporary injunction?

21 A. Well, my understanding is they've been suspended  
22 until trial on the merits is concluded.

23 Q. Now, subsequent to the time that that injunction  
24 was issued, had you been involved in the Louisiana  
25 litigation related to Harrier and Falcon?

1 A. Yes, I have.

2 Q. Have the co-trustees, in your personal  
3 observation, made any effort to have a hearing appointing  
4 them or approving their supposed appointment approved?

5 A. Yes. They've been trying very, very diligently to  
6 have that happen.

7 Q. Have you personally --

8 Withdraw.

9 Do you have personal knowledge of requests  
10 made to the Court in Louisiana to speed up the hearing  
11 because of the pendency of hearings here in this court?

12 A. Yes. They've had several --

13 MR. COX: Objection; hearsay if he goes  
14 beyond "yes," Your Honor. If there's a request -- there's  
15 a document. I think they put a document up. If he wants  
16 to get the document out and testify about it and get it  
17 admitted into evidence, he can. But right now it's hearsay  
18 to repeat what other people said out of this courtroom.

19 MR. CHAMBERS: I'm -- I'm happy to regress.

20 Q. (BY MR. CHAMBERS) In addition, have there been  
21 efforts just this week to have hearings set before the  
22 Court?

23 A. Yes.

24 Q. And is there, in fact, suddenly a teleconference  
25 tomorrow at 2:00 p.m.?

1 MR. COX: Objection; leading.

2 MR. CHAMBERS: I'll withdraw the question.

3 Q. (BY MR. CHAMBERS) Are you aware that -- of a  
4 hearing that's been set for tomorrow at 2:00 p.m.?

5 A. Yes. I am aware.

6 Q. And you have personal knowledge through your  
7 participation in the lawsuit?

8 A. That's correct.

9 Q. Prior to the time of this hearing being set, are  
10 you aware of whether the trustees, the purported Louisiana  
11 trustees, have been served with the Court's TRO?

12 A. From what I know, they've been served with both of  
13 them, the original and the extended.

14 MR. COX: Objection. No foundation. Lacks  
15 personal knowledge. Unless he can testify that he served  
16 them himself, I don't think he has any basis to testify  
17 about that. We have a return of service, but he doesn't  
18 have a basis to testify.

19 MR. CHAMBERS: Your Honor, he can rely on  
20 public documents that are -- come to his attention through  
21 his participation in the lawsuit. So we have returns of  
22 service on file. I can ask the Court to simply take  
23 judicial notice of the returns of service. I guess that's  
24 more efficient.

25 THE COURT: It's so noted.

1 Q. (BY MR. CHAMBERS) Subsequent to the Court's entry  
2 of the temporary injunction, were you aware of any actions  
3 taken by counsel for Ms. Elaine Marshall in the Louisiana  
4 litigation?

5 A. Initially there was, yes.

6 Q. And subsequent to the issuance of the Court's  
7 temporary injunction, was there a -- was counsel for Ms.  
8 Marshall present in arguing a -- with respect to a motion  
9 pending in that court?

10 A. Yes.

11 MR. COX: Objection; vague. I don't  
12 understand what that question -- what counsel -- what  
13 motion -- I don't understand the question. Ambiguous and  
14 vague.

15 MR. CHAMBERS: Well, I'll ask...

16 Q. (BY MR. CHAMBERS) What was your understanding of  
17 the argument made by counsel?

18 MR. COX: That calls for hearsay if he's  
19 going to ask him to testify about what went on in another  
20 court, that's hearsay.

21 MR. CHAMBERS: That's -- that's why I didn't  
22 ask it that way the first time and drew the objection on  
23 vague. Now I'm asking him exactly what was said, which we  
24 all, sitting here, know, since it's been in front of the  
25 Court and both judges, but I'll withdraw the question.



1 MR. COX: Thank you.

2 Q. (BY MR. CHAMBERS) During the opening, did you  
3 hear it represented to the Court that no payments have been  
4 made to the co-trustees?

5 A. Yes. I did hear that.

6 Q. Were you aware of any payments that have been made  
7 to the registry of the court in Louisiana?

8 A. Yes, there had been.

9 Q. And were those purported payments for the  
10 co-trustees?

11 A. They were, yes.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Please.

14 Q. (BY MR. CHAMBERS) I'm handing what's been marked  
15 as Plaintiff's Exhibit No. 1.

16 MR. CHAMBERS: I have an extra copy here.

17 MR. WEBER: Thank you.

18 Q. (BY MR. CHAMBERS) What is Plaintiff's Exhibit  
19 No. 1, Mr. Marshall?

20 A. This appears to be the Court's July 12<sup>th</sup>, 2017,  
21 temporary order.

22 MR. CHAMBERS: We move the admission of 1.

23 MR. COX: No objection, Your Honor.

24 THE COURT: Plaintiff's Exhibit 1 is  
25 admitted.

1 Q. (BY MR. CHAMBERS) Mr. Marshall, if you will turn  
2 with me to Page 15 of Exhibit No. 1.

3 A. Okay.

4 Q. I'm sorry. Page 16.

5 A. Okay.

6 Q. Is there anything with -- is there anything from  
7 this order in Page 16 concerning the co-trustees and their  
8 powers, obligations, and responsibilities?

9 MR. COX: And, objection; Your Honor. The  
10 injunction speaks for itself, and Your Honor doesn't need  
11 any testimony on this because it is Your Honor's injunctive  
12 order.

13 MR. CHAMBERS: Your Honor, it's in evidence.  
14 I can speak to -- and it's part of the record for the  
15 temporary injunction.

16 THE COURT: I'm going to overrule the  
17 objection.

18 A. Could you repeat the question?

19 Q. (BY MR. CHAMBERS) Yes. What -- in your earlier  
20 testimony, we discussed suspension of the co-trustees. Do  
21 you recall that testimony?

22 A. Yes, I do.

23 Q. Where is that in the order of the Court?

24 MR. COX: And I would make the same  
25 objection, Your Honor.

1 THE COURT: Overruled.

2 Q. (BY MR. CHAMBERS) In the interest of time, I'll  
3 point you to page 16.

4 A. Yeah. I was -- I see some of the things you're  
5 talking about.

6 MR. COX: And, again, Your Honor, this is the  
7 point of my objection. I mean, we're going to fish around  
8 and try to find a provision that Your Honor already knows.  
9 And he's -- anybody can read this order and regurgitate it.

10 MR. CHAMBERS: It's for the record.

11 THE COURT: And to be honest, I mean, you  
12 got -- if we had unlimited -- an unlimited amount of time,  
13 I'd be more sympathetic to the objection; but here -- I'm  
14 going to let them -- them manage their time the way they  
15 want to, so that's why I'm overruling the objection.

16 MR. COX: I -- I understand, Your Honor. And  
17 I'm -- I'm going to make -- respect -- with all respect, I  
18 understand what you're saying. I'm going to make the  
19 record, and I'll do it as efficiently as I possibly can.

20 A. It appears to be the second paragraph on 16.

21 Q. (BY MR. CHAMBERS) And does it -- what does the  
22 paragraph state?

23 A. It is further ordered that pursuant to the Texas  
24 Trust Code, Section 114.008 subsection (a) and (9), the  
25 trustee powers, obligations, responsibilities and rights to

1 compensation of the co-trustees of Harrier and Falcon  
2 appointed per the appointments dated December 16, 2016, are  
3 suspended.

4 Q. And were you aware that the counsel in Louisiana  
5 for the co-trustees were given this order?

6 A. My understanding is, yes.

7 MR. COX: Objection; lacks foundation. His  
8 understanding doesn't show personal knowledge. And move to  
9 strike since I was too late.

10 MR. CHAMBERS: I'll re-ask the question.

11 Q. (BY MR. CHAMBERS) Were you involved in an effort  
12 to get notice to the co-trustees in Louisiana of this  
13 order?

14 A. Yes.

15 Q. And were you personally involved in that effort?

16 A. Yes.

17 Q. And was the notice sent?

18 A. Yes, it was.

19 Q. Were all the actions that you discussed that have  
20 occurred in Louisiana concerning the summary judgment  
21 hearings and the request the Court over there, subsequent  
22 to this provision of the temporary injunction?

23 A. Absolutely, yes.

24 MR. CHAMBERS: May I approach, Your Honor?

25 THE COURT: Please.

1 Q. (BY MR. CHAMBERS) I'm handing you what has been  
2 marked as Exhibit No. 5. What is Exhibit No. 5?

3 A. It's my father's last will and testament.

4 Q. Turning to Article III of the Last Will and  
5 Testament.

6 A. Okay.

7 Q. Article III mentions this Staurolite 2006 Grantor  
8 Retained Annuity Trust. Generally, what was that?

9 A. It was -- it was a grantor retained annuity trust  
10 to hold his non-voting stock with Trof, Inc.

11 Q. And the non-voting Trof -- and stock -- Inc. --  
12 what entity did it hold stock in?

13 A. Well, Trof at that time, and, I know --  
14 withholding -- it was intended to hold Ribosome units.

15 Q. And the Ribosome units then, in turn, held what  
16 property?

17 A. Koch non-voting stock and Koch Holdings membership  
18 units.

19 Q. So the Staurolite GRAT -- approximately, what  
20 percentage of your father's wealth that he left in his will  
21 was contained in that Staurolite GRAT?

22 A. Certainly -- certainly 90 percent or greater.

23 Q. Did all of that property, to your understanding,  
24 pass through his estate?

25 A. Yes.

1 Q. The property passing through the estate in the  
2 Staurolite GRAT -- where was it intended -- according to  
3 Article III, to your understanding, where was it intended  
4 to go?

5 MR. COX: Objection. Calls for a legal  
6 conclusion.

7 THE COURT: Sustained.

8 Q. (BY MR. CHAMBERS) What was your understanding of  
9 where the property, under Article III, would end up?

10 MR. COX: Objection. Calls for a legal  
11 conclusion.

12 THE COURT: Overruled.

13 A. Well, obviously, there are two beneficiaries of  
14 the GRAT, so some would go, obviously, into the Marital  
15 Income Trust and then, obviously, a remainder goes out to  
16 the remainder beneficiaries.

17 Q. (BY MR. CHAMBERS) What -- who were the principal  
18 beneficiaries, to your understanding, of the bulk of  
19 your -- your father's estate as reflected in Article III?

20 A. Well, that would be myself and Pierce.

21 Q. And are you both specifically -- it named -- and  
22 your trust also named?

23 A. Yes.

24 Q. Are you named as the principal beneficiary  
25 pursuant to the Harrier Trust?

1 A. Yes, that's correct.

2 Q. The Harrier Trust is the trust that we're here  
3 about today, correct?

4 A. One of them, yes.

5 Q. Now, what percent of the -- the Trof stock that  
6 was the main asset of the Staurolite GRAT, what percent of  
7 that stock is currently in the Harrier Trust?

8 A. I don't know the precise amount, because some, you  
9 know, some of it would have to come out through -- through  
10 the remainder interests through the GRAT or some portion of  
11 it.

12 Q. The -- the stock that you have --

13 Withdrawn.

14 Currently, where is the Trof stock that was  
15 formally in the Staurolite GRAT?

16 MR. COX: Objection; lack of foundation.

17 MR. CHAMBERS: Your Honor, I hope these kinds  
18 of objections are not coming out of our time, because I  
19 mean, he talked about administering the -- all these trusts  
20 through his MarOpCo work. He's talked about his working  
21 with his father. He's got a very thorough foundation  
22 well-established in this court for that question.

23 MR. COX: I believe the testimony is he  
24 stopped on June 15<sup>th</sup> when he was terminated at MarOpCo  
25 and was no longer involved and hasn't been involved and

1 doesn't know what's happened since then. I don't think he  
2 has personal knowledge. If he can establish otherwise,  
3 then he can establish otherwise.

4 MR. CHAMBERS: Well, at least the  
5 representations to this Court and Judge Wood is that  
6 nothing happened to that property. And that it's  
7 subsequent to -- it's subject to an injunction. If Mr. Cox  
8 has had his client move it somewhere, then we would like to  
9 know that. Otherwise -- I think we all know where it is.

10 MR. COX: I think that's exactly my point.  
11 He doesn't have any personal knowledge. Mr. Chambers just  
12 made my point. There's only one person that knows, and  
13 she's here. If you want her to testify about it, she'll be  
14 happy to testify about it. But this witness can't testify  
15 all over the place about everything that goes on when he  
16 hadn't been involved. That's my point. We've allowed  
17 witnesses to give legal conclusions. We've allowed  
18 witnesses to talk about things that they don't know  
19 anything about, and I'm going to -- I'm enforcing those  
20 rules today.

21 THE COURT: I think that Mr. Marshall can --  
22 he can testify as to what he knows as of the time that he  
23 was involved in the administration.

24 MR. CHAMBERS: Okay.

25 MR. COX: Thank you.



1 Q. (BY MR. CHAMBERS) Is your mother a party to this  
2 lawsuit?

3 A. Yes.

4 Q. What is her -- what is her testimony concerning  
5 where the stock of -- the Trof stock from the Staurolite  
6 GRAT currently reside?

7 A. In the Marital Income Trust.

8 Q. And the Marital Income Trust, then, holds the  
9 principal assets of your father at the time of his death?

10 A. Yes.

11 MR. COX: Objection; leading.

12 Q. (BY MR. CHAMBERS) What -- what is -- what is --

13 MR. COX: Objection; leading, Your Honor.

14 THE COURT: Sustained.

15 Q. (BY MR. CHAMBERS) What is the -- concerning the  
16 assets that are presently in the Staurolite --

17 Withdrawn.

18 Concerning the assets that were presently in  
19 the Marital Income Trust, what percentage is supposed to be  
20 for the Harrier Trust?

21 A. Oh, 50 percent of what's in the Marital Income  
22 Trust.

23 Q. And when does the Harrier Trust, when is it  
24 supposed to receive, to your understanding, its principal  
25 interest from the Marital Income Trust?

1 A. On termination of the Marital Income Trust.

2 Q. And when does that occur?

3 A. At my mother's passing.

4 Q. And -- so, at this point in time, that principal  
5 interest has not transferred to the Harrier Trust?

6 A. No. Only -- only whatever the remainder interest  
7 from the GRAT would be.

8 Q. So --

9 MR. COX: Objection. Move to strike  
10 everything after "no." Nonresponsive. And it's a wrong  
11 legal conclusion.

12 MR. CHAMBERS: I'll -- I'll rephrase to  
13 clarify.

14 MR. COX: I didn't object to the question; I  
15 objected to the answer, Your Honor. And -- so I move to  
16 strike after "no."

17 THE COURT: To be honest, I'd have to have it  
18 read back. I mean, I was in the middle of...

19 MR. CHAMBERS: We'll agree to having it  
20 stricken after "no."

21 THE COURT: Okay.

22 MR. CHAMBERS: Will -- can you read back the  
23 last question, please?

24 *(Requested portion read back.)*

25 Q. (BY MR. CHAMBERS) Presently -- and what was your

1 answer to the question?

2 A. It was "no" with the exception of the remainder  
3 interest from the GRAT.

4 MR. COX: And, Your Honor, I would make the  
5 same objection with everything after "no" as nonresponsive.  
6 Move to strike.

7 THE COURT: Sustained.

8 MR. CHAMBERS: We will agree to that.

9 Q. (BY MR. CHAMBERS) So presently, has the interest  
10 in the -- in the Marital Income Trust, the Trof stock  
11 interest, transferred to Harrier?

12 A. No.

13 Q. When -- what is your understanding of whether the  
14 trustee compensation formula presently in place uses the  
15 Trof stock as a measure of the payment to the trustees?

16 A. It does.

17 MR. COX: Objection. Vague and ambiguous. I  
18 don't know what he's asking about. What trust for  
19 compensation?

20 THE COURT: Would you like to rephrase?

21 MR. CHAMBERS: Sure.

22 Q. (BY MR. CHAMBERS) Are you familiar with the  
23 purported trustee compensation that's a part of the  
24 appointment of each trustee by your mother?

25 A. Yes.

1 Q. And how did -- have you read those in detail?

2 A. Yes. They're very short.

3 Q. Have you read the formula --

4 A. Yes.

5 Q. -- with respect to those? And what is your  
6 understanding of whether that formula presently relies on  
7 the value of stock in the Marital Income Trust to calculate  
8 compensation for the trustees?

9 A. It's -- there is a component in the calculation it  
10 uses.

11 Q. And that's even though those assets are not  
12 presently in the Harrier Trust?

13 A. That's correct.

14 Q. Does the Marital Income Trust purport to give the  
15 power to your mother, to your understanding, to be able to  
16 trade, exchange, and swap assets?

17 MR. COX: Objection. Document speaks for  
18 itself. Calls for a legal conclusion.

19 MR. CHAMBERS: Just asking for his  
20 understanding, Your Honor.

21 THE COURT: Overruled.

22 A. Yes. I think it does.

23 Q. (BY MR. CHAMBERS) And does the Harrier Trust  
24 similarly provide trustees with the ability to buy, sell  
25 and exchange assets?

1 A. Yes.

2 MR. COX: Same objection, Your Honor.

3 THE COURT: Overruled.

4 Q. (BY MR. CHAMBERS) Sorry? Your answer?

5 A. Yes, yes.

6 Q. Who is the present beneficiary of the Harrier  
7 Trust?

8 A. I am.

9 Q. What is -- what are the current assets of that  
10 trust?

11 A. There are some Ribosome units and some -- some  
12 Trof stock.

13 Q. And the Ribosome units -- what -- where do they  
14 derive from?

15 A. I (inaudible.)

16 THE REPORTER: I'm sorry. I can't hear you.

17 A. Getting into the distinction between Falcon and  
18 Harrier --

19 Q. (BY MR. CHAMBERS) My question may be much  
20 simpler: Are there a number of holders of the Ribosome  
21 units?

22 A. Yes.

23 Q. And are there a number of colors of different  
24 units?

25 A. Yes, there are.

1 Q. Are there any holders who are not Marshall family  
2 members or entities?

3 A. There are no ultimate beneficial owners who are  
4 not members of the Marshall family.

5 Q. Are there restrictions with respect to who can own  
6 Ribosome units?

7 A. Yes, there are.

8 Q. Who can own Ribosome units?

9 A. Lienal descendants.

10 Q. Lineal descendants of who?

11 A. My father and my mother.

12 Q. Presently, you've testified that the Harrier Trust  
13 has some Ribosome units in it?

14 A. Yes.

15 Q. The Ribosome units are from what entity?

16 A. The various GRATs.

17 Q. And to be a little clearer, what is Ribosome?

18 A. It's a family limited partnership.

19 Q. What does Ribosome hold?

20 A. Non-voting stock and membership units of Koch  
21 Industries, Inc., and Koch Holdings, LLC.

22 Q. And does it hold all the family's non-voting  
23 interest in Koch presently?

24 A. I would -- I would say pretty -- pretty close to  
25 it, if not exactly.

1 MR. CHAMBERS: May I approach, Your Honor?

2 THE COURT: Please.

3 Q. (BY MR. CHAMBERS) I'm handing you what's been  
4 marked as Exhibit No. 2. What is Exhibit No. 2?

5 A. Looks like an Act Of Donation In Trust for  
6 Harrier, yeah.

7 Q. What are the nature -- what kind of --  
8 Withdrawn.

9 At the time you were administering the  
10 Harrier Trust, what kind of work or attention did the  
11 assets that were held in that trust require?

12 A. I mean, generally -- you know, quarterly  
13 distribution, tax return preparation, managing, obviously  
14 the -- the additional shares through the GRATs.

15 Q. Is there any active management of the operating  
16 entities that generate cash involved?

17 A. Some. I would say -- but I would say they're  
18 largely similar.

19 Q. In what respect?

20 A. It's primarily -- it's primarily, you know, a  
21 bookkeeping accounting function.

22 Q. Ultimately, where does the income derive? Where  
23 does the water fall from?

24 A. From Koch Industries and Koch Holdings.

25 Q. And is there any -- does holding Ribosome units

1 permit or allow any sort of control of Koch or its  
2 operations?

3 A. No.

4 Q. So would -- would you consider these estates  
5 passive?

6 A. I think largely they are.

7 Q. Concerning the assets currently held in the  
8 Harrier Trust, is there a market for those assets?

9 A. I would say pretty limited. I mean, I wouldn't  
10 say there's no market; but it's pretty limited.

11 Q. What is the market?

12 A. Generally, it's going to be Koch Industries or  
13 Koch Holdings or members of the Koch family -- other  
14 permitted -- other permitted shareholders and membership  
15 holders of those entities.

16 Q. Concerning the Ribosome unit themselves, can they  
17 be sold directly to Koch?

18 A. Not -- not without consent, no.

19 Q. So who are they restricted to?

20 A. Lineal descendants.

21 Q. And when does the Harrier Trust terminate?

22 A. Let's see what it says on the termination. I  
23 believe it's -- yeah, it's right.

24 Q. When?

25 A. When my youngest turns 35.



1 MR. CHAMBERS: May I approach, Your Honor?

2 THE COURT: Please.

3 Q. (BY MR. CHAMBERS) I'm handing you what's been  
4 marked Exhibit No. 3. What is Exhibit No. 3?

5 A. An Act of Donation In Trust indenture...

6 THE REPORTER: I'm sorry?

7 THE WITNESS: For Falcon Trust.

8 MR. CHAMBERS: And, Your Honor, for  
9 housekeeping, at this point, we'd move the admission of 2  
10 -- Exhibit 2.

11 MR. COX: No objection.

12 THE COURT: Plaintiff's Exhibit 2 admitted.

13 MR. CHAMBERS: And we also move the admission  
14 of 3.

15 MR. COX: No objection.

16 THE COURT: Exhibit No. 3 is admitted.

17 Q. (BY MR. CHAMBERS) Who are the present  
18 beneficiaries of the Falcon Trust?

19 A. Myself and my children.

20 Q. What are the assets in the Falcon Trust?

21 A. Well, it's going to be Ribosome units, obviously.  
22 We didn't exchange the initial corpus being stock and  
23 membership units of Koch, but we exchanged that for  
24 Ribosome units.

25 Q. And is this also a passive investment?

1 A. Yes.

2 Q. Will any of the assets of the Marital Income Trust  
3 pass to the Falcon Trust?

4 A. Not that I recall.

5 Q. Was Ms. Marshall the original trustee of both  
6 Harrier and Falcon?

7 A. Yes.

8 Q. And at all times while she was the trustee, was  
9 she a Texas resident?

10 A. Yes.

11 Q. Were all the beneficiaries of the Harrier, Falcon  
12 Trust at all times Texas residents?

13 A. Yes.

14 Q. Are you presently a Texas resident?

15 A. Yes, I am.

16 Q. Are you presently the sole beneficiary of Harrier  
17 and Falcon?

18 A. Not the sole of both, but certainly -- no.  
19 Obviously, you have to include my children.

20 Q. And are your children Texas residents?

21 A. Yes.

22 MR. CHAMBERS: May I approach, Your Honor?

23 THE COURT: Please.

24 Q. (BY MR. CHAMBERS) What is Exhibit No. 8?

25 A. An appointment of successor co-trustees for

1 Harrier Trust.

2 Q. Do you recognize the signature on Exhibit 8?

3 A. Yes, I do. It's my mother's.

4 MR. CHAMBERS: We move the admission of  
5 Exhibit 8.

6 MR. COX: No objection, Your Honor.

7 THE COURT: Exhibit 8 is admitted.

8 Q. (BY MR. CHAMBERS) What does this purport to be?

9 A. Appears to appoint E. Pierce Marshall, Jr.; Wayne  
10 S. Thompson, Jr.; Judge Lilynn Cutrer; Dr. Karen Aucoin and  
11 Adam P. Johnson as successor co-trustees of Harrier.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Please.

14 Q. (BY MR. CHAMBERS) I've handed you what's been  
15 marked as Exhibit 9. Do you recognize your mother's  
16 signature on that document?

17 A. Yes, I do.

18 Q. What does Exhibit 9 purport to be?

19 A. An appointment of successor co-trustees for Falcon  
20 Trust.

21 Q. What is Exhibit 10?

22 A. Appointment of successor co-trustees for Harrier  
23 Trust.

24 Q. And do you recognize the signature on it?

25 A. I do. It's my mother's.

1 MR. CHAMBERS: We move the admission of  
2 Exhibit 10.

3 MR. COX: No objection, Your Honor.

4 THE COURT: Exhibit 10 is admitted.

5 Q. (BY MR. CHAMBERS) I'm handing you what's been  
6 marked as Exhibit No. 11. Can you identify the signature  
7 on that document?

8 A. Yes. It's my mother's.

9 Q. What does the document purport to be?

10 A. An appointment for successor trustees of Falcon  
11 Trust.

12 MR. CHAMBERS: I move the exhibit -- the  
13 admission of Exhibit 11, Your Honor.

14 MR. COX: No objection, Your Honor.

15 THE COURT: Exhibit 11 is admitted.

16 MR. CHAMBERS: May I approach, Your Honor?

17 THE COURT: Please.

18 Q. (BY MR. CHAMBERS) I'm handing you what's been  
19 marked as Exhibit No. 12. What does Exhibit 12 consist of?

20 A. An appointment of co-trustees for Harrier Trust.

21 Q. In looking at Page 2, who appointed --

22 Withdrawn.

23 Looking at Page 2, do you recognize your  
24 mother's signature?

25 A. Yes, I do.

1 Q. And where was your mother, according to the  
2 document, located at the time she executed the document?

3 A. It looks like Dallas.

4 Q. In Texas?

5 A. Yes.

6 Q. And who is -- who are the witnesses for her  
7 signature?

8 A. Cherry Trapani and Edwin Hunter.

9 Q. And who is Mr. Edwin K. Hunter?

10 A. He's an attorney that's worked for the family for  
11 a number of years.

12 Q. And at the time that this was executed, were you  
13 in pending litigation against Mr. Hunter?

14 A. Yes.

15 Q. And was that the litigation we discussed earlier?

16 A. Yes, it was.

17 Q. If you look with me at Page 3 of the document,  
18 what does this purport to be?

19 MR. COX: Objection, Your Honor. The  
20 document speaks for itself. He has no personal knowledge.

21 MR. CHAMBERS: I can re-ask the question.

22 Q. (BY MR. CHAMBERS) What is your understanding of  
23 what Page 3 of the document is?

24 MR. COX: Same objection, Your Honor. He has  
25 no personal knowledge of it.

1 THE COURT: Overruled.

2 A. It's a conveyance and acceptance for Harrier  
3 Trust.

4 Q. (BY MR. CHAMBERS) And -- and what kind of records  
5 does this purport to be filed in?

6 A. Public property records in Calcasieu Parish.

7 Q. And who was it received from?

8 A. Well, this one was received from --

9 MR. COX: Objection. No personal knowledge,  
10 Your Honor.

11 A. Is says it's received from Edwin K. Hunter.

12 THE COURT: I'm just waiting, Mr. Chambers,  
13 for a response.

14 MR. CHAMBERS: Your Honor, it's -- the  
15 document is in evidence. He's allowed to speak from a  
16 document in evidence and his understanding of the document  
17 in evidence.

18 MR. COX: Again, Your Honor, my objection is  
19 the document speaks for itself. He has no personal  
20 knowledge. If you want to allow him to read from the  
21 document, then I think the document speaks for itself. I  
22 don't think we should do that. If he wants to testify  
23 about what happened, he doesn't have any personal  
24 knowledge. I don't believe there's been any testimony that  
25 he was involved in the execution or process in this

1 document. I don't think he's competent to testify about  
2 it.

3 MR. CHAMBERS: I didn't ask him what  
4 happened. I asked him what was his understanding of his --  
5 of this document that's in evidence.

6 THE COURT: I'm going to overrule the  
7 objection.

8 Q. (BY MR. CHAMBERS) And from whom did the property  
9 record clerk purportedly receive this document?

10 A. It says received from Edwin K. Hunter.

11 Q. Looking at Page 1 of Exhibit 12, who are the  
12 purported trustees appointed by the document?

13 A. Dr. Wayne S. Thompson, Jr.; Judge Lilynn Cutrer;  
14 Dr. Karen Aucoin; Pastor Edward Alexander; and Adam P.  
15 Johnson.

16 Q. Did you know any of these individuals at the time  
17 that this document was executed?

18 A. No.

19 Q. Have you met any of them since?

20 A. No.

21 Q. Have any of them called, written you personally,  
22 or had personal contact with you before the filing of any  
23 proceedings against them?

24 A. No.

25 Q. If you look with me at the third paragraph from

1 the top, what is your understanding of the third paragraph  
2 at the top -- from the top -- generally? What is it?

3 A. It's generally setting out the compensation.

4 Q. And have you been present when Mr. Hunter has  
5 testified about this provision?

6 A. Yes.

7 Q. Where were you present for that testimony?

8 A. It was during our last injunctive hearing.

9 Q. And was it your understanding that this formula  
10 was arrived at by Mr. Hunter?

11 A. That's my understanding. That's what he said.

12 Q. At that time Mr. Hunter put this compensation  
13 formula together, were you in pending litigation with him?

14 A. Oh, yes.

15 Q. And was it the litigation we previously discussed?

16 A. Yes. I can't remember whether we added him to  
17 this case at that time.

18 Q. Have you been involved in a trust which a trustee  
19 fee is paid, in the past?

20 A. Yes.

21 Q. And what is your --

22 Withdrawn.

23 Have you served as a fiduciary for various  
24 trusts of the family?

25 A. Yes. But not with -- without compensation.



1 Q. In your positions -- approximately, how many  
2 fiduciary positions have you held during your career?

3 A. Oh. During my career? Gosh. Probably more than  
4 a dozen.

5 Q. And how many trusts have you actively managed on  
6 behalf of the family?

7 A. Well, certainly...

8 Q. Approximately.

9 A. I would -- I would say three -- the most active, I  
10 would say.

11 Q. I'm sorry?

12 A. Three is probably being the most active in  
13 administering with others.

14 Q. So --

15 A. Expanded, it would probably be six.

16 Q. Which were the most active that you managed?

17 A. I would -- I would say certainly one of my  
18 grandmother's charitable Remainder trusts, her living  
19 trusts, you know, our foundation trusts, as well.

20 Q. And what ones did you do the administrative work  
21 for?

22 A. Well, certainly all of the trusts -- the  
23 testamentary trusts here and the Inter-vivos Trust involved  
24 in my dad's estate. We carried out that administration for  
25 nine years.

1 Q. And that was in Houston?

2 A. It was, yes.

3 Q. Through June of 2 -- '16?

4 A. '15.

5 Q. 2 -- '15. Sorry.

6 A. Yes.

7 Q. Based on your experience and background in working  
8 as a fiduciary, would you ever enter into an agreement such  
9 as this for compensation of trustees?

10 MR. COX: Your Honor -- and I'm going to  
11 object. It calls for a legal conclusion, and I think he's  
12 also asking for an expert opinion. And I don't think that  
13 they have come anywhere close to satisfying the retirements  
14 for an expert. Under Rule 701, they have to establish that  
15 the witness is qualified by knowledge, skill, experience,  
16 training or education to offer such an opinion. I have  
17 heard nothing about education. I have heard nothing about  
18 training. I have heard nothing about skill. The closest  
19 that we have come in this entire examination is that he  
20 managed, without compensation, 12 trusts. And Mr. Chambers  
21 is winding up to ask him a question about the  
22 reasonableness of compensation and whether he would enter  
23 into something like this. He has zero experience, zero  
24 education. And he's offering him as an expert. As a  
25 gatekeeper, it is your responsibility to make a decision

1 whether he's qualified as an expert to offer these  
2 opinions. They've never given us notice that he's going to  
3 give these opinions, and he is unsatisfactory and  
4 incompetent to offer these opinions. And we would move  
5 to -- or object to the question and any line of questioning  
6 along this line.

7 MR. CHAMBERS: I can rephrase the question  
8 and also develop some background as we go.

9 Q. (BY MR. CHAMBERS) When you last had  
10 responsibility for the trust that your mother currently  
11 receives the income from -- the Marital Income Trust -- how  
12 much was in the income from this trust?

13 MR. COX: And I'm going to object to the  
14 question as a mischaracterization of the evidence.  
15 Testimony has been that Ms. Marshall was the trustee and  
16 that he was the administrator -- acted as a secretarial  
17 administrative function with it. He didn't have the duties  
18 or the responsibilities of a trustee. And that's very  
19 important, because what he's now going to try to do is say:  
20 When you acted as an administrator, you can use your  
21 administrator knowledge to satisfy the knowledge,  
22 education, skill or training to testify about what a  
23 trustee can do and what a trustee's compensation can do.  
24 And that's -- that's why it's very important that we be  
25 precise about who did what roles.

1 MR. CHAMBERS: I -- I asked him about how  
2 much income she got. I didn't ask him anything about this  
3 other stuff.

4 THE COURT: Well, I think you made reference  
5 to the position as trustee.

6 MR. COX: To duties and responsibility.

7 MR. CHAMBERS: I'll re-ask it.

8 THE COURT: Okay.

9 Q. (BY MR. CHAMBERS) When you last had any  
10 responsibility for any of the administration of the Marital  
11 Income Trust, any oversight or a look at the actual numbers  
12 and monies passing through those trusts, how much money was  
13 your mother receiving?

14 MR. COX: I object to the extent the question  
15 characterizing him as anything other an administrator of  
16 the trust.

17 THE COURT: Sustained.

18 MR. COX: Thank you.

19 THE COURT: But does -- I mean, he can still  
20 answer the question.

21 MR. COX: I understand.

22 A. My recollection was about 120 million a year at  
23 that time.

24 Q. (BY MR. CHAMBERS) And have you, subsequently,  
25 heard her testify about the amount of money she's been

1 receiving subsequent to that time?

2 A. Vaguely. But I don't remember the number.

3 Q. At least the time you were there, it was  
4 approximately \$120 million a year?

5 A. That's approximately, yes.

6 Q. And have your own receipts of -- the flow of  
7 income from the Koch shares indicated that the earnings, in  
8 general, of Koch have gone up, down, or stayed the same?

9 A. I don't know. I don't get any information on that  
10 anymore.

11 Q. So the last information you have directly is when  
12 she was getting the 120 million in income. If the Harrier  
13 Trust were to receive half that income, approximately, how  
14 much would that be?

15 A. 60 million.

16 Q. And according to the formula set out here, can the  
17 trustees receive, in each calendar, a fee not to exceed  
18 40 percent of the gross receipts?

19 A. Yes. That's what it says.

20 Q. And to your understanding, what would that amount  
21 be as of the last time you saw the numbers?

22 A. 20 -- 25 million.

23 Q. 20 or 25 million?

24 A. Somewhere in the neighborhood.

25 Q. What is your understanding -- what is your view --

1 having served --

2 Withdrawn.

3 How much compensation was your mother  
4 receiving prior to this Harrier appointment of co-trustees?

5 A. None.

6 Q. And what is your understanding, as a beneficiary  
7 of the trust, what is your view on whether this is fair  
8 compensation?

9 MR. COX: Objection, Your Honor. Again, he  
10 has no basis to do it. He has -- this is a back-door way  
11 to get in an expert opinion about what is a fair and  
12 appropriate compensation for a trustee. And there has not  
13 been any foundation laid to satisfy the requirements of 701  
14 for this witness. He's not competent to offer his opinion.

15 MR. CHAMBERS: It's very clear that it's not  
16 what I'm asking. I'm not asking him for an expert opinion  
17 on whether it's correct compensation for a trustee. We're  
18 going to bring that evidence to the Court. I'm asking, as  
19 his perspective as a beneficiary, whether this is fair  
20 compensation.

21 MR. COX: Then same objection. Plus, it's  
22 irrelevant. It doesn't matter what his opinion is about  
23 whether something is fair or whether he likes it. That's  
24 not the standard by which we judge it. So in addition to  
25 being not competent to offer it, it's irrelevant.

1 THE COURT: I'm going to overrule the  
2 objection.

3 Q. (BY MR. CHAMBERS) What is your view on whether --  
4 given your background with the family trust and their  
5 administration, what is your view on whether this is fair  
6 compensation?

7 MR. COX: Same objection.

8 A. It's not, and it's unconscionable --

9 THE COURT: Overruled.

10 MR. COX: And, Your Honor, I would move to  
11 strike "unconscionable," because he's offering a legal  
12 opinion as well.

13 MR. TRIBBLE: Conscious doesn't have to do  
14 with legality; it has to do with morals.

15 MR. COX: Your Honor, it is a legal  
16 conclusion. It is a legal word, and it is nonresponsive to  
17 the question that was asked. Move to strike.

18 THE COURT: Overruled.

19 MR. TRIBBLE: Would this be a good time for a  
20 break, or can I leave the courtroom?

21 THE COURT: You're welcome to leave. I mean,  
22 does anyone else need a break?

23 MR. COX: I would like one, Your Honor,  
24 please.

25 THE COURT: Okay. So let's take --

1 How long do you need?

2 MR. TRIBBLE: You know, 5 minutes.

3 THE COURT: Okay. Let's be back at 11:40.

4 MR. TRIBBLE: Sure.

5 THE COURT: Okay.

6 THE BAILIFF: All rise.

7 *(Break taken from 11:33 a.m. to 11:43 a.m.)*

8 THE COURT: It is 10:42.

9 MR. AKIN: We can wait? Mr. Cox is just  
10 drying his hands. There he is.

11 MR. COX: I apologize, Your Honor.

12 THE COURT: No worries.

13 It is 10:43.

14 MR. CHAMBERS: Your Honor, I'm told, as a  
15 housekeeping matter, we need to move to admit Exhibit 5.

16 MR. COX: No objection, Your Honor.

17 THE COURT: Exhibit 5 is admitted.

18 Q. (BY MR. CHAMBERS) Mr. Marshall, looking back  
19 again at Plaintiff's Exhibit No. 12, the compensation  
20 formula states: Compensation for the co-trustees shall be  
21 determined by a formula divided by the number of  
22 co-trustees serving for that year, and compensation shall  
23 be paid in quarterly installments or if, for whatever  
24 reason, quarterly installments are not able to be made,  
25 then annually.



1                   What is your understanding of whether your  
2 co-trustees' compensation reduces as the number of them  
3 reduces?

4                   MR. COX: Objection. Document speaks for  
5 itself.

6                   THE COURT: Overruled.

7                   And I just want to make a correction. I  
8 think I said it was 10:43 and it's 11:43. And I'm trying  
9 to keep it on the record. So I'm sorry for that  
10 interruption.

11                  And the objection is overruled.

12                  A. Sorry. Was your question whether compensation  
13 changes depending on the number?

14                  Q. (BY MR. CHAMBERS) Yes.

15                  A. No. The total compensation stays the same, so per  
16 capita, it would go up if they go down -- if the number  
17 goes down.

18                  Q. So the last person -- what's your understanding of  
19 what amount of the fee listed here -- the last trustee  
20 standing -- would receive?

21                  A. The entirety of the fee.

22                  Q. If you'll look with me at the last paragraph on  
23 the page -- Page 1 of Exhibit 12, it states: The fee shall  
24 equal the sum of .3 percent of (a) the calculation value,  
25 as defined below, of the trust's interest in the PLM/EPM

1 Marital Income Trust. The -- and (b) the fair market value  
2 of interests in Trof, Inc. or Ribosome L.P. to the extent  
3 such interests have been distributed by the PLM/EPM Marital  
4 Income Trust to the trust, (2) 3 percent of the fair market  
5 value of all other assets, and (3) 5 percent of the gross  
6 trust receipts.

7 Does a portion of that formula, to your  
8 understanding, does any portion of that formula rely  
9 presently on the calculation value of the PLM/EPM Marital  
10 Income Trust?

11 A. Yes. It says -- the first element does.

12 Q. And presently are any of those shares within the  
13 Harrier Trust?

14 A. No.

15 Q. The -- part two here also states that the trustee  
16 shall receive 3 percent of the fair market value of all  
17 other assets.

18 Would retained income be a -- other asset, to  
19 your understanding?

20 A. Yes. It would be cash.

21 Q. And -- so what's your understanding of the  
22 difference in fee that the trustees would receive for any  
23 distributions they failed to make to you in cash?

24 A. Ten times the fee.

25 Q. Ten times the fee for not distributing funds?

1 A. Right.

2 Q. And what was your -- did you hear your mother's  
3 testimony in deposition regarding the first meeting of the  
4 trustees?

5 A. Vaguely. I remember -- I don't have a lot of  
6 detail.

7 Q. Do you recall whether they voted for or against  
8 distributing income to you?

9 A. My recollection is it was against.

10 Q. And undistributed income, as you've described,  
11 that's the one that gets ten -- ten times the compensation?

12 MR. COX: Objection; leading.

13 MR. CHAMBERS: I'll withdraw it.

14 Q. (BY MR. CHAMBERS) What is your understanding of  
15 the fee on undistributed income?

16 A. It's ten times larger.

17 Q. What is your understanding of whether this fee  
18 arrangement will survive through the lifetime of the  
19 trustees appointed?

20 MR. COX: Objection. Calls for a legal  
21 conclusion.

22 MR. CHAMBERS: I'm just asking for his  
23 understanding.

24 THE COURT: Overruled.

25 A. My understanding is it survives for their

1 lifetime, yes.

2 Q. (BY MR. CHAMBERS) And based on --

3 Withdrawn.

4 If something were to happen to you, who would  
5 receive the money under the Harrier Falcon Trust?

6 A. My children.

7 Q. And what age are your children now?

8 A. They're 12, 9, and 7.

9 Q. And your -- what, to your understanding, would  
10 change about the fee structure that you've described so far  
11 if you were to pass away?

12 A. Nothing would change the fee according to this.

13 Q. And would your children then be burdened with the  
14 fees described in Exhibit No. 12?

15 A. Yes, absolutely.

16 MR. CHAMBERS: May I approach, Your Honor?

17 THE COURT: Please.

18 Q. (BY MR. CHAMBERS) I'm handing you what's been  
19 marked as Exhibit No. 13. What is Exhibit No. 13?

20 A. Appointment of co-trustees for Falcon Trust.

21 Q. And do you recognize your mother's signature on  
22 that document?

23 A. Yes, I do.

24 MR. CHAMBERS: We move the admission of  
25 Exhibit 13 and Exhibit 12 to the extent I haven't

1 previously moved.

2 MR. COX: No objection, Your Honor.

3 THE COURT: Exhibits 12 and 13 are admitted.

4 Q. (BY MR. CHAMBERS) Does the Exhibit No. 13, the  
5 Falcon Trust, does it contain the identical compensation  
6 formula for the co-trustees that the Harrier Trust had that  
7 we've just discussed?

8 A. Yes, it does.

9 Q. And are the trustees appointed here to the Falcon  
10 Trust the same ones appointed as co-trustees to the Harrier  
11 Trust?

12 A. Yes.

13 Q. What is your position in this litigation about  
14 whether any of these appointments for these co-trustees are  
15 valid appointments?

16 A. I don't believe they are.

17 Q. And does that go for both the Falcon and the  
18 Harrier Trust?

19 A. Yes, it does.

20 MR. CHAMBERS: May I approach, Your Honor?

21 THE COURT: Please.

22 Q. (BY MR. CHAMBERS) I'm handing you what's been  
23 marked as Exhibit No. 49. What is that document?

24 A. It appears to be the similar conveyances that were  
25 recorded and attached in Exhibit 13.

1 MR. CHAMBERS: We move the admission of 49.

2 MR. COX: I'm sorry, Your Honor. I don't  
3 have that in front of me yet.

4 No objection, Your Honor.

5 THE COURT: Exhibit 49 is admitted.

6 MR. CHAMBERS: May I approach, Your Honor?

7 THE COURT: Please.

8 Q. (BY MR. CHAMBERS) I've handed you what's been  
9 marked as Exhibit No. 50. What does Exhibit No. 50 purport  
10 to be?

11 A. It's also a conveyance for Harrier Trust.

12 MR. CHAMBERS: We move the admission of 50.

13 MR. COX: No objection, Your Honor.

14 THE COURT: Exhibit 50 is admitted.

15 Q. (BY MR. CHAMBERS) I've handed you what's been  
16 marked as Exhibit 53. What does Exhibit 53 purport to be?

17 A. It's another recorded conveyance for Falcon Trust.

18 MR. CHAMBERS: We move the admission of 53.

19 MR. COX: No objection.

20 THE COURT: Exhibit 53 is admitted.

21 MR. CHAMBERS: May I approach, Your Honor?

22 THE COURT: Please.

23 Q. (BY MR. CHAMBERS) I've handed you Exhibit No. 54.  
24 What does that purport to be?

25 A. Another conveyance for Harrier Trust.

1 MR. CHAMBERS: Move the admission of 54.

2 MR. COX: No objection, Your Honor.

3 THE COURT: Exhibit 54 is admitted.

4 MR. CHAMBERS: May I approach, Your Honor?

5 THE COURT: Please.

6 Q. (BY MR. CHAMBERS) I'm handing you what's been  
7 marked as Exhibit No. 57. What does that purport to be?

8 A. Conveyance for Falcon Trust.

9 MR. CHAMBERS: Move the admission of 57.

10 MR. COX: No objection, Your Honor.

11 THE COURT: Exhibit 57 is admitted.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Please.

14 Q. (BY MR. CHAMBERS) I'm handing you what's been  
15 marked as 58. What does that purport to be?

16 A. A recorded conveyance for Harrier Trust.

17 MR. CHAMBERS: Move the admission of 58, Your  
18 Honor.

19 MR. COX: No objection, Your Honor.

20 THE COURT: Exhibit 58 is admitted.

21 MR. CHAMBERS: May I approach?

22 THE COURT: Please.

23 Q. (BY MR. CHAMBERS) I'm handing you what's been  
24 marked as 63. What does Exhibit 63 purport to be?

25 A. Record conveyance for Falcon Trust?

1 MR. CHAMBERS: Move the admission of 63.

2 MR. COX: No objection, Your Honor.

3 THE COURT: Exhibit 63 is admitted.

4 MR. CHAMBERS: May I approach, Your Honor?

5 THE COURT: Please.

6 Q. (BY MR. CHAMBERS) I'm handing you what's been  
7 marked as 64. What does Exhibit 64 purport to be?

8 A. It's a recorded conveyance for Harrier Trust.

9 MR. CHAMBERS: Move the admission of 64.

10 MR. COX: No objection, Your Honor.

11 THE COURT: 64 is admitted.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Please.

14 Q. (BY MR. CHAMBERS) I'm handing you what's been  
15 marked as Exhibit No. 70. What does Exhibit 70 purport to  
16 be?

17 A. A recorded conveyance for Falcon Trust.

18 MR. CHAMBERS: Move the admission of 70.

19 MR. COX: No objection.

20 THE COURT: Exhibit 70 is admitted.

21 Q. (BY MR. CHAMBERS) And the last of this group --

22 MR. CHAMBERS: May I approach, Your Honor?

23 THE COURT: Please.

24 Q. (BY MR. CHAMBERS) I'm handing you what's been  
25 marked as Exhibit No. 71. What does Exhibit 71 purport to



1 be?

2 A. It's a recorded conveyance for Harrier Trust.

3 MR. CHAMBERS: I move the exhibit -- the  
4 admission of Exhibit 71.

5 MR. COX: No objection, Your Honor.

6 THE COURT: Exhibit 71 is admitted.

7 Q. (BY MR. CHAMBERS) Mr. Marshall, looking back --  
8 and it's probably easiest to start at the 71 that's been  
9 admitted -- looking at Page 2 of that document, does that  
10 contain the Act of Acceptance of Mr. Thompson for the  
11 Harrier Trust?

12 A. Yes, it does.

13 Q. And the Act of Acceptance as made by the trustee  
14 is reflected here. Does it expressly include the  
15 compensation formula for the trustee?

16 A. Yes, it does.

17 Q. And the acceptance of the trustee -- does it have  
18 the same calculation set forth in it as the appointments  
19 did?

20 A. Yes, it does.

21 Q. And -- so is there any separation in the  
22 instrument of the Act of Acceptance between the  
23 qualification as co-trustee stated here in the formula?

24 A. No.

25 Q. I'm going to ask you if you would briefly look at

1 the appointments that -- we'll go back from 70, 64 -- well,  
2 70; 64; and 63. And did those also each contain the  
3 acceptances of the co-trustees, in this case, Mr. Johnson  
4 and Mr. Thompson for Falcon?

5 A. Yes, they do.

6 Q. And Exhibit 58 and 57?

7 A. Yes. Those contain an acceptance for Lilynn  
8 Cutrer -- yeah.

9 Q. 54 and 53. Did those contain the Acts of  
10 Acceptance for Ms. Aucoin?

11 A. Yeah. It's upside down. It's a stapling issue;  
12 but, yeah, it does.

13 Q. And then Exhibits 50 and 49, did they contain the  
14 Reverend Alexander's acceptances?

15 A. Yes. It does.

16 Q. And in all those cases, does it -- the acceptance  
17 contain both the fee -- the specific fee formula that we've  
18 previously discussed as well as the qualification of  
19 trustee in one instrument?

20 A. Yes, it does.

21 Q. Concerning any of these trustees that we've just  
22 introduced, the Acts of Acceptances for -- have you met any  
23 of them, ever?

24 A. No.

25 Q. Have they made any attempt to introduce themselves

1 to you?

2 A. No.

3 Q. With respect -- in particular, with respect to  
4 Judge Cutrer, what is your understanding of her position?

5 A. She's a judge -- she's a sitting judge in the 14th  
6 District Court of Calcasieu Parish.

7 Q. And are you presently in litigation for -- is  
8 there a pending lawsuit there brought by your mother  
9 against you called the Peroxisome lawsuit?

10 A. Yes. That's one of them, yes.

11 Q. And what does that litigation involve her trying  
12 to do?

13 A. She's intending to try to revoke an irrevocable  
14 trust.

15 Q. And, approximately, what is the level of value  
16 that that trust has presently?

17 A. I don't know what the current value is. But it  
18 settled with a hundred million-dollar value.

19 Q. So at the beginning, it had a hundred million in  
20 it?

21 A. Yes.

22 Q. And it's growing to whatever it has --

23 A. Sure.

24 Q. So that -- in that dispute -- in the very same  
25 parish where Judge Cutrer sits, your mother is trying to

1 cancel a hundred million-dollar gift to you?

2 MR. COX: Objection, leading.

3 MR. CHAMBERS: I'll re-ask it.

4 Q. (BY MR. CHAMBERS) What is your mother doing in  
5 the Peroxisome lawsuit that's hitting the same parish where  
6 Judge Cutrer is a sitting judge in the same judicial  
7 district?

8 A. Trying to revoke an interest in an irrevocable  
9 trust.

10 Q. And is it -- is that the trust you've described as  
11 having been -- even as an original value -- it settled at a  
12 hundred million dollars?

13 A. Right. I would have a 50-percent interest in  
14 that.

15 Q. Is -- what other litigation, specifically, is  
16 pending by the -- by two of the trustees and your mother in  
17 the same judicial district where Judge Cutrer sits?

18 A. Well, both Harrier and Falcon are -- have pending  
19 cases.

20 Q. And what -- to your understanding -- is the action  
21 currently being sought by the two trustees who are bringing  
22 the summary judgment motion there?

23 A. Well, one summary judgment motion is to confirm  
24 their appointments; and another is to give full faith and  
25 credit to the -- judgment.

1 MR. COX: Your Honor, I would object and move  
2 to strike the second aspect. I don't think there's any  
3 summary judgment. I mean, I just think that's flat out  
4 untrue. There is no summary judgment with respect to  
5 confirming the full faith and credit of the Wyoming. I  
6 mean, if there's a document or something that they want to  
7 offer to support that, but there is -- I don't -- that's  
8 not -- my understanding is that is just absolutely false.  
9 And that is -- should move to strike because they need to  
10 come up with some best evidence or do something other than  
11 have him testify about that.

12 MR. CHAMBERS: My question may have been a  
13 little unclear. Let me try to re-ask the question, and  
14 we'll agree to striking the prior answer.

15 THE COURT: Okay.

16 MR. COX: Thank you.

17 THE COURT: And we're -- it's lunchtime. So  
18 just -- we'll break naturally, but just be aware that we  
19 need to break for lunch so we can be back at 1:00.

20 MR. CHAMBERS: Okay. When would -- when  
21 would the Court prefer taking a break?

22 THE COURT: Five minutes ago.

23 MR. COX: We second that, Your Honor.

24 MR. CHAMBERS: I will -- I am through with  
25 this line of questioning.

1 THE BAILIFF: All rise.

2 THE COURT: We'll be back at 1:00.

3 *(Lunch recess, 12:06 p.m. to 1:09 p.m.)*

4 THE BAILIFF: All rise.

5 THE COURT: Please be seated.

6 Okay. It's 1:08.

7 Any time you're ready, Mr. Chambers.

8 MR. CHAMBERS: May I approach the witness?

9 THE COURT: Please.

10 Q. (BY MR. CHAMBERS) Mr. Marshall, I'm handing you  
11 what's been marked as Plaintiff No. 1 and 2. What is  
12 Exhibit No. 1 and 2?

13 A. It appears to be a letter from Legacy Trust  
14 Company, Janice Crow Legacy Trust Company to Edwin F.  
15 Hunter, the III.

16 Q. And were you copied on this letter?

17 A. Looks -- it says that I was.

18 Q. This letter is dated April 12, 2017, from Legacy  
19 Trust. What is the subject matter of the letter?

20 A. It says --

21 MR. COX: I'm sorry. I'm -- I'm lost.

22 MR. CHAMBERS: I'm sorry.

23 MR. TRIBBLE: 82.

24 MR. CHAMBERS: I -- I misidentified the  
25 letter. It's Plaintiff Exhibit 82. It looked like a 1 to

1 me.

2 MR. COX: Okay. And, I guess, we haven't  
3 offered it yet. But it's -- objection; hearsay. He's  
4 asking him what he said, and the hearsay objection applies  
5 as well. I may have been lost in the question, because I  
6 was looking at the wrong exhibit. I apologize.

7 Q. (BY MR. CHAMBERS) All right. Mr. Marshall, did  
8 you receive this letter as a beneficiary of the Harrier  
9 Trust?

10 A. Yes.

11 Q. And is Legacy Trust a court-appointed trustee of  
12 that trust?

13 A. Yes, they are.

14 MR. CHAMBERS: Your Honor, this is just a  
15 standard business record of the trust to the beneficiaries  
16 and the trustee. And it's from the court-appointed trustee  
17 to him and Edwin Hunter on behalf of Mrs. Marshall.

18 MR. COX: Your Honor, it's absolutely  
19 hearsay. It's an out-of-court statement by Mrs. Crow.  
20 It's been no effort, whatsoever, to establish the business  
21 records exception and given the date of it April 12, 2017.  
22 There is no possible way that this witness can establish  
23 the business record. It is absolute hearsay, and it is  
24 inadmissible. Not to mention, it's the grandchildren's  
25 trust, so it's irrelevant.

1 MR. CHAMBERS: Your Honor, the  
2 grandchildren's trust is a party to the litigation. The --  
3 this is a trustee speaking in their capacity as trustee to  
4 Preston Marshall. And it's not hearsay because it's in the  
5 course and scope of that. There's no other reason for them  
6 to be sending this. And it talks specifically about  
7 serving as co-trustee, which is the business of Legacy  
8 Trust, so it's a business record.

9 MR. COX: Your Honor, Mr. Chambers can assert  
10 it's a business record all he wants; but unless there is  
11 competent testimony to establish the requirements of the  
12 business exception to the hearsay rule, it doesn't come in.  
13 Absolutely hearsay. This an out-of-court statement by  
14 someone. They're not here. There's no one here from  
15 Legacy to prove this up or to satisfy the business  
16 exception. It's absolutely hearsay.

17 THE COURT: I have to agree. I'm sustaining  
18 the objection.

19 You're welcome to make another argument if  
20 you want it on the record.

21 MR. CHAMBERS: May I approach, Your Honor?

22 THE COURT: Please.

23 Q. (BY MR. CHAMBERS) I'm handing you what's been  
24 marked as Plaintiff's Exhibit No. 4 and --

25 MR. CHAMBERS: Does the Court have a copy of



1 this?

2 MS. PACHECO: It's in the binders.

3 MR. CHAMBERS: Oh, it is? Okay.

4 Q. (BY MR. CHAMBERS) What is Plaintiff's Exhibit  
5 No. 4, Mr. Marshall?

6 A. It says it's Defendant Elaine T. Marshall's Notice  
7 of Production of Accountings.

8 Q. And which trust does this Notice of Production of  
9 Accountings purport to relate to?

10 A. It says the EPM Marital Income Trust, Harrier  
11 Trust and Falcon Trust.

12 MR. CHAMBERS: We move the admission of  
13 Exhibit 4.

14 MR. COX: No objection, Your Honor.

15 THE COURT: Exhibit 4 is admitted.

16 Q. (BY MR. CHAMBERS) Turning with me, if you would,  
17 to the page marked 32 at the bottom right-hand corner and  
18 also marked ETM017290 of Exhibit 4.

19 A. Okay.

20 Q. What is the date of the purported accounting here  
21 given?

22 A. June 30<sup>th</sup>, 2016.

23 Q. And when did all this activity with respect to the  
24 Harrier Trust and these trust appointments occur, before or  
25 after that date?

1 A. Several months after this date.

2 Q. Do you have any more recent financial information  
3 from the trust than what's provided here?

4 A. Not that I know of.

5 Q. Looking at the page marked ETMO17344 in the bottom  
6 right-hand corner of Exhibit 4 toward the back of the  
7 document.

8 MR. COX: I'm sorry, Mr. Chambers. Would you  
9 mind giving me that number again?

10 MR. CHAMBERS: 17344.

11 MR. COX: Okay. Thank you.

12 Q. (BY MR. CHAMBERS) What is the date of the  
13 purported accounting for the Falcon Trust?

14 A. It's the same, June 30<sup>th</sup>, 2016.

15 Q. And was this after the -- or before the date of  
16 the appointment of the co-trustees?

17 A. Several months before.

18 Q. Have you been provided any additional information  
19 regarding the accounts of the Falcon Trust since that time?

20 A. I don't believe so.

21 Q. Does the Falcon Trust --

22 Withdrawn.

23 Does the Harrier Trust contain in it a  
24 provision that would allow the trustees to sell assets of  
25 the trust?

1       A.    I think there's something to that effect.  I guess  
2 we could go through it and find the language.

3       Q.    Could you find the Harrier Trust?

4       A.    Sure.  Okay.

5       Q.    So my question is:  Concerning the Harrier Trust,  
6 do you find a provision that permits the sale or transfer  
7 of assets by the trustees?

8       A.    Yes.

9       Q.    In what provision is that, to your understanding?

10      A.    It's like 6 -- 6.1E and F.

11      Q.    So the provision you've indicated is at -- looking  
12 at Exhibit 2 -- is it Page 5; is that correct?

13      A.    Yes.  That's right.

14      Q.    And it states:  Sale or Other Disposition.  The  
15 trustee may sell or exchange, redeem, mortgage, pledge  
16 lease as lessor, or otherwise dispose of any productive or  
17 unproductive property of the trust estate, at the public  
18 sale, private sale or otherwise; for cash or other  
19 consideration; payable at the time of the disposition or on  
20 credit.  The trustee may abandon trust property that the  
21 trustee determines does not warrant protection.

22               Is that one of the powers confirmed on the  
23 trustees?

24      A.    That's what it says here, yeah.

25      Q.    And it is your understanding that trustees work by

1 majority or by some other method in Louisiana?

2 A. Generally, it's by majority unless it's stated  
3 otherwise.

4 Q. Okay. And in this case, would majority rule  
5 control disposition of assets?

6 A. Possibly unless it's a breach.

7 Q. With respect to the assets currently held by the  
8 trustees of the Harrier Trust or trustee, whichever the  
9 Court determines, what is -- what do -- what is your view  
10 of those assets in terms of their value to you as a  
11 beneficiary?

12 A. Well, they're unique.

13 Q. And in what way are they unique?

14 A. They're not replaceable.

15 Q. Other than family members of the Marshall family,  
16 does anyone own Ribosome units?

17 A. Not at this time.

18 Q. And who would be the potential buyers presently of  
19 Ribosome units without consent allowing for sell to Koch?

20 A. Allowing their sale --

21 Q. To Koch. So absent some special consent, who can  
22 buy Ribosome units?

23 A. I'm assuming it's still the same, lineal  
24 descendants.

25 Q. Is your brother a lineal descendant?

1 A. Yes.

2 Q. Would your brother be a potential purchaser for  
3 Ribosome units if your trustees decided to sell them?

4 A. Yes.

5 Q. And have the trustees that purported to be  
6 appointed in Louisiana -- have they shown so far any --  
7 have they abided by any injunction by this Court?

8 A. No.

9 MR. COX: Objection. There's no -- there's  
10 no foundation. That's pure speculation. I don't -- you  
11 can't just say: What it is? I mean, you have to ask  
12 him -- what is the -- if there is a violation. You can't  
13 say: Well, did you perceive a violation. Yes. Well, what  
14 is that?

15 MR. CHAMBERS: Okay. I'll be more specific.

16 Q. (BY MR. CHAMBERS) What -- what was your  
17 understanding of whether these trustees were suspended for  
18 doing anything with respect to the trust?

19 A. That was my understanding, yes.

20 Q. What --

21 MR. COX: I'm going to object, Your Honor.  
22 The injunction speaks for itself. And he's asking him to  
23 offer a legal conclusion about a document that you,  
24 yourself, authored and know the most about and what you  
25 intended.

1 THE COURT: As long as he's asking for his  
2 understanding of it, I'm not going to crawl with it.

3 MR. COX: Thank you, Your Honor.

4 Q. (BY MR. CHAMBERS) And have they -- have the  
5 trustees continued to take actions in Louisiana, to your  
6 personal knowledge?

7 A. Yes, they have.

8 Q. Have they continued to seek legal remedies in  
9 Louisiana?

10 A. Yes, they have.

11 Q. Have they continued to act as if they have not  
12 been suspended?

13 A. Yes, that's correct.

14 Q. And if they are not suspended and not enjoined, is  
15 one of the things they have a power to do -- if they are  
16 trustees -- is to sell or dispose of assets?

17 A. Potentially, yes.

18 Q. And what would be the impact to you if the assets  
19 that are currently in this trust, the Ribosome units, were  
20 disposed of?

21 A. Well, I don't know that you could get them back.

22 Q. And the -- would it be possible for -- what is  
23 your understanding of what fee the trustees would be  
24 entitled to if they sold assets through the trust?

25 A. Well, certainly that would go into the calculation

1 of the fee as it's written right now.

2 Q. And how, according to the way it's written right  
3 now, to your understanding would they receive a fee?

4 A. Well, that would be part of the gross receipts.  
5 The sale of that would be calculated into gross receipts.

6 Q. And what is the percentage for gross receipts  
7 under the appointments?

8 A. Well, there's a cap at 40 percent of gross  
9 receipts.

10 Q. 40 percent of the gross receipts?

11 A. Right.

12 Q. So up to that amount?

13 A. Up to that amount.

14 Q. Concerning the Falcon Trust, does the Falcon Trust  
15 contain a similar provision allowing the sale of trust  
16 assets?

17 A. I believe the language is the same, yes.

18 Q. And the Falcon Trust, does it also own Ribosome  
19 units?

20 A. It does, yes. Through members -- through other  
21 members.

22 Q. What do you consider the unique qualities of those  
23 assets to be?

24 A. Certainly the same. It's a similar property.

25 Q. Are there any -- the way it's structured, are

1 there potential tax benefits for estate purposes of those  
2 assets?

3 MR. COX: Objection. Calls for a legal  
4 conclusion. No basis.

5 MR. CHAMBERS: I'll withdraw the question.

6 Q. (BY MR. CHAMBERS) Would you be able to replace  
7 those assets if they were sold?

8 A. I don't believe so.

9 MR. CHAMBERS: May I approach, Your Honor?

10 THE COURT: Please.

11 MR. CHAMBERS: I only have one copy, for some  
12 reason, of this, but -- so I'm -- you mind...

13 MR. WEBER: That's fine.

14 Q. (BY MR. CHAMBERS) I've handed you what's been  
15 marked as Plaintiff's Exhibit 31. Can you identify that  
16 document?

17 A. That's the First Amendment Petition for  
18 Declaratory Relief.

19 Q. And where was this filed?

20 A. In the 14<sup>th</sup> Judicial District Court of  
21 Louisiana.

22 Q. Is that the court in which one of the trustees  
23 purportedly appointed to the Harrier and Falcon Trust sits  
24 as a judge, currently?

25 A. Yes.



1 Q. Is this a pending action in that district?

2 A. Yes, it is.

3 Q. Who are the parties to this action?

4 A. It looks like my mother.

5 Q. So at this point in time -- this was before the  
6 trustees were added to the action?

7 A. Yes.

8 Q. And is the relief sought at that time before the  
9 trustees were added, is it broader or more limited in  
10 scope?

11 A. It seems more limited to me.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Please.

14 Q. (BY MR. CHAMBERS) I'm handing you what's been  
15 marked as Plaintiff's Exhibit 16. Can you identify that  
16 document?

17 A. It's the Second Amendment Petition for Declaratory  
18 Relief in the same action -- same cause.

19 Q. And who are the parties to this action?

20 A. Elaine T. Marshall, Pastor Edward Alexander, and  
21 Adam P. Johnson.

22 Q. As part of the two additional Plaintiffs,  
23 Mr. Alexander and Mr. Johnson, are they two of the  
24 purported trustees?

25 A. They are, yes.

1 Q. And have they continued to pursue this action?

2 A. Yes.

3 Q. Have they continued to pursue it subsequent to the  
4 Court's temporary injunction?

5 A. Yes, they have.

6 Q. If you will look with me at Page 5 of the  
7 document.

8 A. Okay.

9 Q. It states in Paragraph 6 a request that: The  
10 Court declare that the judgment of the Wyoming Court  
11 entered on March 18<sup>th</sup>, 2015, under docket number 16922 on  
12 the docket of the Ninth Judicial District of the State of  
13 Wyoming in and for Teton County, is entitled to full faith  
14 and credit and that the trustees of the Harrier Trust be  
15 and are bound thereby.

16 Is that an action where you have brought  
17 claims for relief against your mother here in Harris  
18 County?

19 A. Yes.

20 Q. And were your claims for relief pending here in  
21 Harris County before this amendment?

22 A. Yes.

23 Q. I'm handing you what's been marked as Exhibit  
24 No. 14.

25 MS. PACHECO: 16?

1 MR. CHAMBERS: Plaintiffs move the admission  
2 of Exhibit 16.

3 MR. COX: No objection, Your Honor.

4 MR. CHAMBERS: Plaintiffs move the admission  
5 of Exhibit 31.

6 MR. COX: No objection, Your Honor.

7 THE COURT: Plaintiff's Exhibits 16 and 31  
8 are admitted.

9 Q. (BY MR. CHAMBERS) I've handed you what's been  
10 marked as Plaintiff Exhibit No. 14. Did you receive  
11 that -- this document in the course of the temporary  
12 injunction litigation?

13 A. Yes.

14 Q. And who -- what does it purport to be?

15 A. It says it's Task Commencement Form for quarter  
16 one of 2017.

17 Q. And -- what is Item 6?

18 A. Traveled to Dallas for a continuity meeting with  
19 prior solo trustee.

20 Q. What is Item 7?

21 A. Joined in the accounting homologation proceeding  
22 before Judge Wilson.

23 Q. Is that an action that Mr. Johnson is continuing  
24 with?

25 A. Yes, as is No. 8.

1 Q. And what is No. 8?

2 A. Joined in the motion to grant full faith and  
3 credit in Louisiana to the Wyoming judgment.

4 Q. What is Item No. 9?

5 A. Received basic tutorial on trustee powers, duties,  
6 and obligations.

7 Q. When the folks for Legacy were appointed by the  
8 Court, did they engage -- did they need to engage, to your  
9 understanding, in basic informational needs concerning  
10 trustee powers, duties, and obligations?

11 A. Not to my knowledge.

12 Q. Item No. 15. What is that item?

13 A. Voted in favor of sending an updated request for  
14 information letter to Preston Marshall, through Adams &  
15 Reese, LLP, to assist in evaluating future distributions  
16 decisions.

17 Q. Okay. And -- at that time, this is what was done  
18 by Mr. Johnson. He says: As a co-trustee, correct?

19 A. That's what it says, yes.

20 Q. And had you previously -- in addition to this  
21 request for information letter discussed from Adams &  
22 Reese -- had you previously received a letter from them  
23 concerning the Harrier Trust and Falcon Trust?

24 A. I believe so.

25 Q. And who were they purport to represent into that

1 letter?

2 A. My mother.

3 Q. Looking at the -- what is Item 16?

4 A. Nominated co-trustee Dr. Stephen Thompson as the  
5 primary point of contact with Northern Trust to set up a  
6 meeting with trust account manager.

7 Q. And what is Northern Trust?

8 A. It's a bank here -- in Dallas where the accounts  
9 for this trust are held.

10 Q. Have the trustees provided you with any of the  
11 books and the records of that trust account?

12 A. Not that I've seen.

13 MR. CHAMBERS: May I approach?

14 THE COURT: Please.

15 Q. (BY MR. CHAMBERS) I'm handing you what's been  
16 marked as Exhibit 36. What is Exhibit 36?

17 A. A Motion For Partial Summary Judgment Approving  
18 Appointment of Co-Trustees.

19 MR. CHAMBERS: We move the admission of  
20 Exhibit 14.

21 MR. COX: No objection, Your Honor.

22 THE COURT: Exhibit 14 admitted.

23 MR. CHAMBERS: And we move the admission of  
24 Exhibit 36.

25 MR. COX: No objection, Your Honor.

1 THE COURT: Exhibit 36 is admitted.

2 Q. (BY MR. CHAMBERS) If you'll turn with me to Page  
3 3.

4 A. Okay.

5 MR. COX: Are we still on Plaintiff's 36?

6 MR. CHAMBERS: Yes.

7 MR. COX: Thank you.

8 MR. CHAMBERS: Plaintiff's 36, Page 3.

9 A. Okay.

10 Q. (BY MR. CHAMBERS) It states: Accordingly, the  
11 instant motion requests the Court to declare that the  
12 December, 2016, appointments of co-trustees are proper and  
13 appropriate in light of the Act of Trust in Louisiana law  
14 and the appointments therefore be confirmed.

15 Is that -- is that appointment -- is that  
16 including -- do the appointments include both the fee  
17 provision that we've discussed here today and the  
18 appointment?

19 A. The fee is contained in the appointment, I guess,  
20 if that's what you're asking.

21 Q. And it is also contained in the acceptance?

22 A. Yes, it is.

23 Q. And is it your understanding that's what they're  
24 asking to have approved?

25 A. Possibly. I guess. They've got a footnote on

1 that, so...

2 Q. I'm handing you what's been marked as Plaintiff's  
3 Exhibit No. 33. What is Exhibit No. 33?

4 A. An Ex Parte Motion To Deposit Funds Into The  
5 Registry of The Court.

6 MR. CHAMBERS: We move the admission of  
7 Exhibit 33.

8 MR. COX: Is it only a three-page document?  
9 Is this the whole document?

10 MR. CHAMBERS: Yes. I believe that to be the  
11 case. The middle page simply has the file stamp on it.

12 MR. COX: No objection, Your Honor.

13 THE COURT: Exhibit 33 is admitted.

14 Q. (BY MR. CHAMBERS) What is 33? What is Exhibit  
15 33?

16 A. An Ex Parte Motion To Deposit Funds Into The  
17 Registry of The Court.

18 Q. And is that the trustee fees?

19 A. Yes.

20 Q. I'm handing you what's been marked Exhibit 34.  
21 What is Exhibit 34?

22 A. It's the same motion for Harrier Trust.

23 Q. And was this also filed in Calcasieu Parish?

24 A. Yes.

25 MR. CHAMBERS: Move the admission of Exhibit

1 34.

2 MR. COX: No objection, Your Honor.

3 THE COURT: Exhibit No. 34 is admitted.

4 Q. (BY MR. CHAMBERS) I'm handing you what's been  
5 marked as Exhibit No. 35. What is Exhibit No. 35?

6 A. It's an Order in the Harrier Trust case,  
7 depositing funds into the registry.

8 MR. CHAMBERS: I move the admission of  
9 Exhibit 35 into evidence.

10 MR. COX: No objection, Your Honor.

11 THE COURT: Exhibit 35 is admitted.

12 Q. (BY MR. CHAMBERS) I'm handing you what's been  
13 marked as Exhibit No. 43. What is Exhibit No. 43?

14 A. It looks like a transmittal from Adams & Reese,  
15 transmitting co-trustees Edward Alexander and Adam  
16 Johnson's Memorandum in Opposition to Motion to Stay  
17 Substantive Proceedings Pending Adequate Discovery.

18 MR. CHAMBERS: I move the admission of  
19 Exhibit No. 43.

20 MR. COX: No objection, Your Honor.

21 THE COURT: Exhibit 43 is admitted.

22 MR. CHAMBERS: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. (BY MR. CHAMBERS) I'm handing you what's been  
25 marked at Exhibit 45. What's Exhibit 45?



1           A.    A transmittal from Adams & Reese, transmitting  
2 co-trustee Edward Alexander and Adam Johnson's Motion to  
3 Return Hearing on Motion for Partial Summary Judgment and  
4 Alternative Motion for New Trial with Request for Expedited  
5 Hearing.

6                   MR. CHAMBERS:  Move the admission of Exhibit  
7 No. 45, Your Honor.

8                   MR. COX:  No objection, Your Honor.

9                   THE COURT:  Exhibit 45 is admitted.

10           Q.    (BY MR. CHAMBERS)  With respect to Exhibit No. 45,  
11 was that filed after the court's temporary injunction?

12           A.    Yes.

13           Q.    Currently is the motion for summary judgment by  
14 the trustees, purported trustees of the Harrier Trust, is  
15 it set for a hearing before the Court?

16           A.    Yes, it is.

17           Q.    When is it set?

18           A.    December 12<sup>th</sup>.

19           Q.    And is the judge of the 14<sup>th</sup> District Court --  
20 Judge Cutrer -- is she one of the people they're asking the  
21 Court to approve in their motion?

22           A.    Yes.

23                   MR. CHAMBERS:  Pass the witness.

24                   THE COURT:  It is 1:43.

25                   MR. COX:  Well, do you have their times --

1 their time that...

2 THE COURT: Well, we didn't divide up how the  
3 three hours that Preston is allotted to present his case --  
4 we didn't specify how that would be done as far as  
5 cross-examination and direct. And -- so my thought is that  
6 each of you are given three hours with one hour for the  
7 co-trustees. What if I just keep time and direct and  
8 redirects are allocated toward Preston and  
9 cross-examinations are allocated toward Ms. Marshall?

10 MR. COX: And the co-trustees?

11 THE COURT: Right.

12 MR. COX: And -- Yes, Your Honor, I agree  
13 with that. My question is: I was going to check and see  
14 what you had their time at right now.

15 THE COURT: If you want to give me a minute,  
16 I can -- I can give you that information.

17 MR. COX: Please. I have them at two hours  
18 and 7 minutes.

19 THE COURT: Okay.

20 MR. TRIBBLE: That's about what I have.

21 MR. CHAMBERS: Your Honor, the one issue that  
22 didn't occur to us -- and I don't know how the Court wants  
23 to handle it -- but, you know, it would be my preference  
24 not to spend a lot of time making speaking objections. But  
25 it seems to me that there were an awful lot of objections,

1 especially in the early part of my cross. I'm not -- I'm  
2 not really fussing about the last part, but it just seemed  
3 like an awful lot of time was spent on objections. So I  
4 hope the Court will take that into consideration in some  
5 way, because I don't want to just try to interrupt his exam  
6 the way he did mine for the first 40 minutes.

7 THE COURT: Well, what is your proposal, add  
8 15 minutes to what you've already been allotted?

9 MR. CHAMBERS: That's what I would propose.

10 MR. COX: I'm sorry? What was the proposal?

11 THE COURT: Add 15 minutes to what's already  
12 been allotted to Preston. So instead of three hours, he  
13 gets three hours and 15 minutes.

14 MR. COX: And I objected when I thought that  
15 there was objectionable questions. I mean, it wasn't like  
16 nothing I objected to was sustained. There was plenty of  
17 things that were sustained and moved on -- from things.  
18 And -- and not to mention, there were many other questions  
19 that were just withdrawn in response to the objections.

20 THE COURT: Yeah.

21 MR. COX: I wasn't --

22 THE COURT: I know.

23 MR. COX: I enforced the rules is what I did.

24 THE COURT: And I agree. I mean, I've seen  
25 attorneys really abuse objections; and that's not what I

1 saw here.

2 MR. CHAMBERS: Well, Your Honor, we're not  
3 saying abuse; but, at the same time, in a very -- it would  
4 be highly technical -- it's going to be a very limited time  
5 frame. It's not something we anticipated. And we've  
6 got -- I bet you, if you timed it outside, it was  
7 40 minutes or pretty close to 40 minutes were spent on  
8 objections. That's kind of tough when the total amount of  
9 time is 30 -- you know, three hours. So any -- and -- and  
10 also, I don't know if there's going to be any time used by  
11 the trustees; but to the extent that there's time they  
12 don't use, it seems like that could be seeded and -- and  
13 make -- make up for this issue.

14 THE COURT: I agree. I mean, chances are  
15 what you'll do is just add a little time to both of you.  
16 Whatever the trustees aren't using, then we'll allocate  
17 that. But I'm sure you're going to have objections.

18 MR. CHAMBERS: I'm going to tightly protect  
19 the record. That's all I'm going to do.

20 THE COURT: Well, I'm sure -- I'm sure that's  
21 what the other side is going to do, too. But -- I mean,  
22 you're -- I'll take it into consideration. Let's just see  
23 where we -- how far we can get. And let me just -- what  
24 did you guys say you believed that you had as far as time  
25 consumed already?

1 MR. COX: Two hours and seven minutes.

2 MR. TRIBBLE: I have a 123 and a half  
3 minutes, but I was 2 minutes late when I started so it's  
4 about 125. It was two hours and 5 minutes.

5 THE COURT: Okay. And let me just confirm  
6 that with what I have real quick. I have exactly  
7 125 minutes.

8 MR. TRIBBLE: Yes.

9 THE COURT: Okay.

10 MR. TRIBBLE: Thank you, Your Honor.

11 THE COURT: And -- so just to be clear on the  
12 record, right now it is 1:47.

13 MR. COX: Thank you, Your Honor.

14 May I proceed?

15 THE COURT: Please.

16 **CROSS-EXAMINATION**

17 BY MR. COX:

18 Q. Mr. Marshall, on December 6<sup>th</sup> of 2016,  
19 Ms. Elaine Marshall was the sole trustee of Harrier Trust,  
20 was she not?

21 A. I believe that's correct.

22 Q. And also on December 6<sup>th</sup> of 2016, Mrs. Elaine  
23 Marshall was the sole trustee of the Falcon Trust; is that  
24 correct?

25 A. I believe that's correct.

1 Q. Now, if you'll look with me at Plaintiff's Exhibit  
2 2, please, sir. Do you have that in front of you?

3 A. I can get it. Okay.

4 Q. And that is the Harrier Trust instrument, is it  
5 not?

6 A. Yes, it is.

7 Q. And if you will look with me at Page 3 of that  
8 document. Do you see Article VI?

9 A. Yes, I do.

10 Q. All right. And in 6.1, it states that the powers  
11 that the trustee shall possess the following powers with  
12 respect to the trust, correct?

13 A. Yes. It does say that.

14 Q. And then with respect to 6.1A, the Trustee's  
15 Discretionary Authority, it says: The trustee shall have  
16 the sole discretion to determine the manner, time,  
17 circumstances, and conditions of the exercise of any right,  
18 power or authority vested in the trustee.

19 Is that correct?

20 MR. CHAMBERS: Objection. Document speaks  
21 for itself.

22 MR. COX: It does. And I'm asking him to  
23 provide the Court with the document. I'm not asking him  
24 for his understanding. I'm not asking him for his legal  
25 conclusion. I'm asking him to point out clauses of the

1 document that are relevant to the Court.

2 MR. CHAMBERS: Well, there's -- Your Honor,  
3 the document's in evidence. There's no reason for him to  
4 read it to the Court.

5 THE COURT: Overruled.

6 Again, I'm going to let them use their time  
7 the way they want to as far as -- if they want to read  
8 it -- I'm going to -- not have a problem with that.

9 MR. CHAMBERS: Your Honor, I'm just trying to  
10 protect the record for, you know, in the same way Counsel  
11 did while I was...

12 THE COURT: I appreciate that, Mr. Chambers.

13 Q. (BY MR. COX) Can I get you to turn with me to  
14 Page 6 of Plaintiff's Exhibit 2?

15 A. Okay.

16 Q. And do you see in Section "N" where it says:  
17 Delegated powers. The trustee may employ managers,  
18 supervisors, accountants, or appraisers should it consider  
19 any of their services necessarily to properly administer  
20 the trust?

21 Do you see that?

22 A. I see that's what it says.

23 Q. And is it your understanding that that is the  
24 provision that your mother used to allow you to help her  
25 administer the Harrier Trust?

1       A.    We didn't discuss any of the particular powers in  
2 this instrument when we were doing it.

3       Q.    When you were working with your mother and  
4 administering the Harrier Trust, did you ever tell her:  
5 Hey, Mom, I don't think you have the power to delegate this  
6 administration to me?

7       A.    We had no discussion around delegation at all.

8       Q.    You certainly didn't raise an objection, did you?

9       A.    She didn't. I didn't. Nobody did.

10      Q.    Didn't offend your sensibilities?

11      A.    Well, didn't offend hers or mine.

12      Q.    Didn't find that it violated the trust instrument  
13 in any way, did it?

14      A.    We never had a discussion about whether it  
15 violated the trust instrument or not.

16      Q.    Okay. So similarly, you don't have any objection  
17 when Mrs. Marshall asked Mr. Hunter to help her in the  
18 administration and interview potential -- future  
19 co-trustees, do you?

20      A.    I do. I do.

21      Q.    Because it didn't involve you, right?

22      A.    No. Because he's not honest.

23      Q.    And that's your personal opinion, right?

24      A.    There's findings by courts to that effect.

25      Q.    But you understand that you're not the trustee and



1 that you're not in control of Harrier, do you not, sir?

2 A. Right. But that wasn't your question.

3 Q. Okay. Well, I'm asking you a new question, now.

4 A. Okay.

5 Q. Do you understand you're not in control?

6 A. Yeah. I'm not the trustee, sure.

7 Q. And you understand that it was your mother's  
8 decision to decide how to administer Harrier Trust as the  
9 sole trustee?

10 MR. CHAMBERS: Objection. Calls for a legal  
11 conclusion and is compound as asked.

12 MR. COX: I asked: Is it your understanding,  
13 which is what I understood was the Court's guidance on how  
14 to appropriately ask that question.

15 MR. CHAMBERS: Well, my problem is -- he's  
16 trying to get Preston to bless legally a very complex issue  
17 about whether she had the right to do what she did. So if  
18 you're just saying: Does the instrument say that, which is  
19 what he said he was going to do -- the instrument says she  
20 can do various things. If she does it in a different  
21 context, then that's a different issue. So as it's  
22 presenting, it's calling for a legal conclusion to a  
23 complex question about whether she had the right to do what  
24 she did. That's my objection.

25 THE COURT: As long as it's not seeking a

1 legal conclusion and as long as it's seeking his  
2 understanding, I don't have a problem with that.

3 MR. COX: And I -- I believe I had the word  
4 "understanding" in there -- his understanding.

5 THE COURT: I don't remember.

6 MR. COX: I believe I did. That was my  
7 intention.

8 THE COURT: Okay.

9 Q. (BY MR. COX) Now, can we -- can you look with me  
10 on Page 8, please, Mr. Marshall? And do you see Section  
11 6.2?

12 A. Yes. I see it.

13 Q. You see the title is General Administration?

14 A. It does say that.

15 Q. And then it identifies the following: The  
16 following provisions shall govern general administration of  
17 the trust, correct?

18 A. It does say that.

19 Q. All right. Now, one of the general  
20 administrations that is specifically identified here on  
21 this page can be found down in Section G under Successor  
22 Trustee, can it not?

23 A. "G" does say Successor Trustee. That's true.

24 Q. All right. And -- so it's a general  
25 administration power that the trustee shall be empowered to

1 select and designate one or more disinterested individuals  
2 to serve as co-trustee and may designate a successor  
3 trustee should she seeks or otherwise fail to serve as  
4 trustee for any reason.

5 Is that what it says?

6 A. That is what it says.

7 Q. Now, it goes on to say: The selection and  
8 designation of any successor trustee shall be made by  
9 notarial act or last will and testament valid under the  
10 laws of the state of Texas.

11 Do you see that?

12 A. Yes, I do see that.

13 Q. All right. Now, can you look with me at  
14 Plaintiff's Exhibit No. 12?

15 A. Okay.

16 Q. All right. And you testified about this earlier  
17 and what its meaning was. But we can agree, can we not,  
18 that this is the Harrier Trust appointment of co-trustees  
19 by notarial act, can we not?

20 A. There is a notary, and I think that there is the  
21 appointment of the co-trustees for the Harrier Trust, I  
22 guess, if that's what your question is.

23 Q. Okay. Now, let's go back and look again at  
24 Plaintiff's Exhibit No. 2. I'd like to look at Page 9, the  
25 same place that we left off. And it says: Governing Law

1 in Section H.

2 A. I'm sorry? Which page did you need?

3 Q. Page 9.

4 A. Okay.

5 Q. Of Plaintiff's Exhibit 2.

6 A. Okay. I see that.

7 Q. All right. And it says: The trust shall be  
8 governed by the Louisiana Trust Code, Louisiana revised  
9 statutes et seq., as amended.

10 Do you understand that to mean Louisiana law  
11 governs the Harrier Trust?

12 A. I can see that it says that it's governed under  
13 the Louisiana Trust Code in the section that it's cited.

14 Q. Is that your understanding that Louisiana law  
15 applies to this trust?

16 A. I think -- I think the tax code says the tax code  
17 applies.

18 Q. And in the next sentence, it says the trustee  
19 shall apply to the 14<sup>th</sup> Judicial District Court for  
20 Calcasieu Parish, Louisiana, for instructions regarding any  
21 questions that might arise regarding the administration of  
22 the trust, correct?

23 A. It does say that.

24 Q. All right. Now, the administration of the  
25 trust -- the last four words that we see right there -- we

1 know that the general administration is covered by Section  
2 6.2, do we not?

3 MR. CHAMBERS: Objection. Calls for a legal  
4 conclusion.

5 MR. COX: No. I mean, I can ask it.

6 Q. (BY MR. COX) Can you read for me the two words  
7 after Section 6.2 on the prior page, Mr. Marshall?

8 MR. CHAMBERS: I -- I would like a ruling on  
9 my objection rather than --

10 THE COURT: He rephrased his question.

11 MR. COX: I withdrew that.

12 THE COURT: You withdrew it? Okay.

13 MR. COX: I withdrew it, and then I asked --

14 MR. CHAMBERS: I didn't hear that on the  
15 record. I'm sorry.

16 Q. (BY MR. COX) Mr. Marshall, can you read for me  
17 the two words after 6.2 on Page 8?

18 A. It says General Administration.

19 Q. And a sub part of 6.2 General Administration is  
20 Successor Trustee down at the bottom of the page in Section  
21 G, is it not?

22 A. That does say Successor Trustee.

23 Q. Can we agree, then, that the appointment of a  
24 successor or co-trustee is a general administration of the  
25 Harrier Trust subject to the law of Louisiana and the 14th

1 Judicial District Court for Calcasieu Parish?

2 MR. CHAMBERS: Objection. Calls for a legal  
3 conclusion.

4 THE COURT: Sustained.

5 Q. (BY MR. COX) It is your understanding that the  
6 appointment of a co-trustee or successor co-trustee is a  
7 general administrative act that is governed by Louisiana  
8 law and it must be decided by the 14th Judicial District  
9 Court for Calcasieu Parish?

10 MR. CHAMBERS: Objection. Calls for a legal  
11 conclusion, Your Honor. That -- that is -- and it's a very  
12 complex question. It's the reason I'm making the  
13 objection. So there's a -- there's case law that applies  
14 as to when a trustee can and cannot apply for a -- guidance  
15 from the Court on these issues.

16 For example, there's a case -- there's a  
17 Louisiana Supreme Court case that says the matters of  
18 discretion where discretion is granted under the trust  
19 instrument, you can't ask the Court for direction. In  
20 other words, you can't ask for a ruling in advance that  
21 what you're doing is correct. And -- so it's my position  
22 that this is a very complex legal question and it's  
23 compound.

24 MR. COX: Your Honor, I -- I object to the  
25 coaching of the witness through a very extensive speaking

1 objection. The question was: Was it his understanding.  
2 Yes, no, I don't know are all wonderful answers to that  
3 question.

4 MR. CHAMBERS: Was it his understanding is  
5 not mentioned in that question. I'm happy to have the  
6 reporter read it back.

7 Could you read the question back?

8 THE COURT: He did say -- "is it your  
9 understanding." He did.

10 MR. CHAMBERS: For -- Your Honor, can -- for  
11 my benefit, could I have it read back?

12 MR. TRIBBLE: He did, but it was an extremely  
13 long question.

14 MR. CHAMBERS: Okay.

15 MR. COX: I think -- one riot, one ranger is  
16 the rule that generally applies in court --

17 MR. CHAMBERS: We're trying to help you.

18 MR. COX: Well, I'm doing just fine on my  
19 own.

20 THE COURT: I'm going to allow the question,  
21 and I'm going to overrule the objection.

22 A. Can you read it back?

23 Q. (BY MR. COX) I'll repeat it.

24 A. Okay.

25 Q. It is your understanding that the appointment of a

1 successor co-trustee or a co-trustee is a general  
2 administration of the Harrier Trust subject to Louisiana  
3 law and the proper court jurisdiction of the 14<sup>th</sup>  
4 Judicial District Court for Calcasieu Parish, Louisiana?

5 A. I don't know.

6 MR. CHAMBERS: Objection; form, compound.  
7 Calls for a legal conclusion.

8 THE COURT: Overruled.

9 Q. (BY MR. COX) And, Mr. Marshall, the answer was:  
10 "I don't know"?

11 A. Correct.

12 Q. Now, didn't you apply for or apply to the 14th  
13 Judicial District Court instructions with respect to the  
14 administration of a trust under a similar provision in the  
15 Marshall Legacy Foundation?

16 A. I would have to get it out and see. I don't  
17 recall what it says. You can get it out if you want to  
18 read it and see what it says.

19 Q. You just don't remember at this point?

20 A. Not specifically everything that was in the  
21 petition, so if we want to get it out, we can read it.

22 Q. But you do agree that you did file with 14<sup>th</sup>  
23 Judicial District for the Marshall Legacy Foundation,  
24 correct?

25 A. On what issue?



1 Q. You filed for the Marshall Legacy Foundation. Did  
2 you file a lawsuit related to the Marshall Legacy  
3 Foundation in the 14<sup>th</sup> District Judicial Court, Calcasieu  
4 Parish, Louisiana?

5 A. There is a case related. There's at least one  
6 case related.

7 Q. That you filed?

8 A. Which one?

9 Q. Is there a case, sir, that you filed?

10 A. Which one? I need to know which one.

11 Q. Did you file multiple cases, sir?

12 A. There are many -- yes -- there are many cases  
13 filed in the 14<sup>th</sup> JDC, so which one are you talking  
14 about?

15 Q. The one related to the Marshall Legacy Foundation.

16 A. Which one?

17 Q. How many cases have you filed related to the  
18 Marshall Legacy Foundation?

19 A. There are several, Mr. Cox. Which one are you  
20 talking about? They're petitions, there are  
21 cross-petitions, they're instructions. Which one are you  
22 talking about?

23 Q. I'm talking about the one with respect to the  
24 gifts to Kinkaid School that you filed on September 14<sup>th</sup>  
25 of 2015, Docket Number 2015-3683.

1 A. Okay. I recall that one.

2 Q. And you sought guidance on administrations of the  
3 Marshall Legacy Foundation in a suit very similar to what  
4 is authorized here in Section H of Plaintiff's Exhibit 2?

5 A. No.

6 Q. Now, let's look at Plaintiff's Exhibit 2 on Page  
7 9, Section 7.2 with respect to construction. And do you  
8 see that it says: The provisions of the trust shall be  
9 accorded liberal construction?

10 A. I see that it says that, yes.

11 Q. Now, let's turn and let's take a look at  
12 Plaintiff's Exhibit 3, which is the trust instrument for  
13 the Falcon Trust, is it not?

14 A. Yes, it is.

15 Q. And it is a very similar document, is it not?

16 A. It's close, yes.

17 Q. All right. Let's take a look at Page 3 of that.

18 A. Okay.

19 Q. And do you see Section VI where it says Trustee?

20 A. Yes.

21 Q. 6.1 Powers. And then A where it says Trustee's  
22 Discretionary Authority?

23 A. Yes, I see that.

24 Q. And are the provisions -- this provision, 6.1A,  
25 the same for both Falcon and Harrier?

1 A. I mean, they look similar. I didn't bother to  
2 read them word-for-word, but they look very similar.

3 Q. And similarly, if you can turn with me to Page 6  
4 of Plaintiff's Exhibit 3. Section N on Page 6 authorizes  
5 the trustee to delegate powers?

6 A. And it's entitled: Delegated Powers.

7 Q. Yes. And it deals with employee, managers,  
8 supervisors, accountants or appraisers to help in services  
9 necessarily to -- necessary to properly administer the  
10 trust, correct?

11 A. It does say that, yes.

12 Q. And is that the power that Mrs. Marshall used to  
13 help -- to get you to help her administer the Falcon Trust?

14 A. Like I said, we didn't have a discussion on that.

15 Q. You didn't object when you were asked to help  
16 administer the Falcon Trust, did you?

17 A. I didn't object; neither did she.

18 Q. Let's turn to the next page -- or Page 8, I  
19 guess -- which is Section 6.2, and it deals with the  
20 general administration. Do you see that?

21 A. Yes. 6.2 is titled: General Administration.

22 Q. All right. And that's the same as it was in  
23 Harrier, is it not?

24 A. I believe that's right.

25 Q. All right. And we didn't look at this, but in

1 Section A, Trustee's Fees. Do you see that?

2 A. Yes. It is titled Trustee's Fees.

3 Q. It says the trustee shall be entitled to receive  
4 reasonable compensation for services actually rendered,  
5 which shall not exceed the customary charge imposed by  
6 banks or trust companies in the locality for discharging  
7 equivalent duties.

8 Do you see that?

9 A. Yes. It says that.

10 Q. And that's an administrative power of the trustee,  
11 is it not?

12 A. I don't know that. It's listed here.

13 Q. Okay. Let's skip down to Section G, Successor  
14 Trustee. We see here in Falcon, do we not, that similar  
15 the trustee has the power to appoint successor trustees or  
16 co-trustees as in Harrier, correct?

17 A. They do look similar, yes.

18 Q. Okay. And if we move on to Section H, Governing  
19 Law, the Louisiana Trust Code, again, is identified as the  
20 applicable law, is it not?

21 A. The Louisiana Trust Code is listed here in H.

22 Q. Okay. And in the last sentence of Section H, it  
23 says that the trustee shall apply to the 14<sup>th</sup> JDC for  
24 Calcasieu Parish, Louisiana, for instructions regarding any  
25 question that might arise regarding the administration of

1 the trust, correct?

2 A. It says that, but it cites a different section of  
3 the trust code, so I'm not sure what the significance of  
4 that is.

5 Q. Okay. Very good. But it's related to the  
6 administration of trusts, is it not?

7 A. The last sentence is related to the administration  
8 of the trust.

9 Q. And Section 6.2 identifies General Administration,  
10 does it not?

11 A. It does say General Administration.

12 Q. And the appointment of successor trustee or  
13 appointment of a co-trustee is an enumerated general  
14 administration, is it not?

15 A. I don't -- I don't know whether it is or isn't.  
16 But G is under General Administration so...

17 Q. So your position is that because successor  
18 trustees, under General Administration, they have no  
19 relationship, whatsoever?

20 A. I don't know the legal import (phonetic) of that.

21 Q. Do you understand how to outline a document? We  
22 have a part and a subpart, sir.

23 A. If you want to say that one is connected to the  
24 other legally, that's something that you guys can argue, I  
25 suppose.

1 Q. Well, actually, I'm asking you. Is your  
2 understanding that Section G has nothing to do with Section  
3 6.2?

4 A. I don't know whether it does or doesn't.

5 Q. Is that the best answer you can give me, sir?

6 A. That's the only answer I'm going to give you.

7 Q. Now, we talked about -- and I don't think I asked  
8 this, but we talked about the fee. The trustee's fee with  
9 respect to Falcon, we talked about that. But the provision  
10 is the same in both Falcon and Harrier, is it not?

11 A. I think they are similar, yes.

12 Q. All right. And during the time that Mrs.  
13 Marshall, I guess, the entire time that Mrs. Marshall has  
14 served as a trustee or a co-trustee, she has taken zero  
15 dollars in trustee fees, correct?

16 A. To my knowledge, that's correct.

17 Q. Now, is it your understanding that -- well, you  
18 know who Carole Neff is, do you not?

19 A. Yes, I do.

20 Q. She's your expert that you hired in this case on  
21 Louisiana trust law, correct?

22 A. She is, yes.

23 Q. And are you aware that she has admitted that the  
24 14<sup>th</sup> JDC was the only proper court for administrative  
25 questions of Harrier?

1 MR. CHAMBERS: Objection. Mischaracterizes  
2 the evidence which actually it is before this Court, so  
3 I'll rely on the Court's recollection.

4 MR. COX: My question was: Is he aware of  
5 it.

6 MR. CHAMBERS: Well, to say he's aware of it,  
7 it suggests -- that's the entirety of her testimony on the  
8 issue.

9 MR. COX: I'm not saying that's the entirety  
10 of her testimony.

11 THE COURT: To be honest, I don't -- I don't  
12 remember what her testimony was on that issue, and I don't  
13 know what to...

14 MR. COX: I think -- and, Your Honor, I guess  
15 what I would ask is that you conditionally allow him to  
16 answer the question. I'm going to play Ms. Neff's video in  
17 the case; and, you know, if I'm -- it's egg on my face if  
18 I'm wrong. I'm asking him if he is aware that that was her  
19 testimony.

20 THE COURT: Okay.

21 MR. COX: And if that's the question and if  
22 she comes and she testifies on video that it wasn't, shame  
23 on me.

24 MR. CHAMBERS: Well, my objection is still  
25 that he mischaracterized the testimony of the witness by --

1 at least, I thought -- saying that was her complete  
2 testimony on the issue, but...

3 MR. COX: I did not use the word "complete."  
4 I did not use the word "entirely." I asked him: Was he  
5 aware -- in fact, I've got my notes right here: Was he  
6 aware that Carole Neff admitted that the 14th JDC was the  
7 only proper court for the administration of Harrier?

8 THE COURT: Okay. I'll allow that question.

9 A. I wasn't at her depo. I didn't read the  
10 transcript of that either.

11 Q. (BY MR. COX) But she's your expert. You hired  
12 her. You paid her; and you're relying on her, correct?

13 A. She is an expert that we hired, yes.

14 Q. You're relying on her, correct?

15 A. I don't know. We hired her as an expert to help  
16 us provide an opinion on some Louisiana law.

17 Q. It's the best expert you could find on those  
18 issues to offer an opinion in support of your case, is it  
19 not?

20 A. I don't know about that, one way or the other.

21 Q. Do you make it a practice of hiring weak experts  
22 or ones that don't support your case?

23 A. I think -- we try to hire the best expert we think  
24 is right for the issue.

25 Q. Thank you. Now, as I understand it, one of your



1 complaints is that the co-trustees don't have a lot of  
2 experience in serving as trustees for trusts.

3 A. I think that's one of the issues here, yes.

4 Q. Is that one of your complaints, sir?

5 A. That's one of the issues here, yes.

6 Q. Is one of complaints that they don't have the  
7 proper education for it?

8 A. I think that is an issue here, yes.

9 Q. Okay. But you're aware that in Section G there's  
10 no criteria with respect to education or experience that  
11 was set forth by your father?

12 A. I don't know. If you want to go through it. I  
13 don't see anything here.

14 Q. I'm sorry? Are you agreeing with me, sir?

15 A. No. What was your question?

16 Q. My question is: Your father -- in Harrier and  
17 Falcon -- didn't set out any knowledge or experience or  
18 educational requirements for the trustees or any future  
19 trustees, did he?

20 A. In which section?

21 Q. Section G, Page 8 of Exhibits 3 -- Plaintiff's  
22 Exhibit 3 and Plaintiff's Exhibit 2. The exact one that  
23 you have -- your document --

24 A. Yeah. I don't see that wording here.

25 Q. Right. So there was no such requirement by your

1 father, correct?

2 A. I don't know that that automatically means that  
3 there's not a requirement for it, but that language isn't  
4 in that Section G. I'll agree with you on that.

5 Q. All right. What it says is: The trustee shall be  
6 empowered to select and designate one or more disinterested  
7 individuals to serve as co-trustee.

8 The only limitation that is contained in the  
9 trust instrument is that they be disinterested, correct?

10 A. That's one of them, yes.

11 Q. You appointed Patrick Wright as the trustee for  
12 the Stevens Living Trust?

13 A. For a time he was.

14 Q. All right. How many times before that had he  
15 served as trustee?

16 A. I don't know.

17 Q. Was it a breach of fiduciary duty for you to  
18 appoint a trustee to the Stevens Living Trust when you had  
19 no idea how many times he had served as a trustee before?

20 A. No. I think that argument was made and rejected.

21 Q. Okay. So you're not saying that just because  
22 someone's never served as a trustee before they're  
23 incompetent, incapable, or unqualified to serve as a  
24 trustee, are you?

25 A. No. I think if you were talking about -- that is

1 the limited and sole factor? Is that your question?

2 Q. I'm not saying it's the limited sole factor. I'm  
3 saying --

4 A. Well, it sounds -- what it says. So if -- you  
5 wanted it limited to that factor, so -- I don't think  
6 that's correct.

7 Q. Okay. And -- and I don't want to argue -- I don't  
8 want to argue or fuss with you; but you appointed someone,  
9 Patrick Wright, that you didn't know what his experience as  
10 a trustee was, correct?

11 A. That's correct.

12 Q. Okay. And you didn't breach your fiduciary duty,  
13 in your opinion, when you did that, did you?

14 A. No. That was challenged. That was not the only  
15 factor in appointing Patrick, so -- and that was challenged  
16 and it was not sustained.

17 Q. Okay. But he wasn't disqualified by the fact that  
18 he hadn't served or you didn't know that he had served as a  
19 trustee before?

20 A. No. The totality of the factors meant he could  
21 serve.

22 Q. And similar, you would give your mother the same  
23 benefit of the doubt, she gets to take into consideration  
24 the totality of the factors as she makes the decision as  
25 authorized by the Harrier and Falcon instruments as to who

1 to appoint as trustees?

2 A. No. Because Edwin didn't pick Patrick Wright.  
3 And we didn't select or interview Patrick Wright.

4 Q. Okay.

5 A. There's a critical difference.

6 MR. COX: I'm going to object as  
7 nonresponsive.

8 Q. (BY MR. COX) And my question is: You would give  
9 your mother the same benefit of the doubt to evaluate the  
10 totality of the situation in selecting co-trustees?

11 A. No. I wouldn't because she's using Edwin to do  
12 it. As I explained, Edwin is not honest. And -- so we  
13 know that that's not an appropriate thing to do.

14 Q. Okay. So you get a different standard than your  
15 mother gets?

16 A. If I had used Edwin to select Patrick, that would  
17 be a problem.

18 Q. You get a different standard than your mother  
19 gets?

20 A. I disagree with you.

21 Q. How long had you known Patrick Wright before you  
22 appointed him?

23 A. I knew Patrick, at that point -- probably about  
24 three weeks -- had some discussions with him.

25 Q. It's a breach of fiduciary duty by you to appoint

1 someone as trustee that you'd only known for three weeks?

2 A. I think that was part of the challenge, and that  
3 was found by the Court not to be.

4 Q. Did you breach your fiduciary duty -- or, I guess,  
5 maybe I --

6 A. If it was ruled by the Court not to be, so I think  
7 your question was answered by the Court.

8 Q. Okay. Thank you. Let's drill down a little bit  
9 on your understanding of the temporary injunction. And  
10 that's Plaintiff's Exhibit No. 1. And can you turn with me  
11 in Plaintiff's Exhibit No. 1 to Page 16?

12 A. Okay.

13 Q. All right. You with me on Page 16?

14 A. Yeah.

15 Q. All right. The next-to-last paragraph, it says:  
16 It is further ordered that pursuant to the Texas Trust Code  
17 114.008(a)(9), the trustee powers, obligations,  
18 responsibilities, and rights to compensation of the  
19 co-trustees of Harrier and Falcon appointed per the  
20 appointments dated December 16<sup>th</sup> are suspended.

21 That is the provision that deals with the  
22 co-trustees, correct?

23 A. It's one of them.

24 Q. All right. Well, is there another one? And I  
25 thought we spent some time on your direct, asking you and

1 you had to be directed back to this one. Is there any  
2 other one that you're aware of?

3 A. It looks like co-trustees are mentioned throughout  
4 the bullets above.

5 Q. Okay. Well, let's take a look at those bullets.  
6 I think that's an important point. Let's go back to Page  
7 15; and let's look at it, okay? Because it says: It is  
8 further ordered that Ms. Marshall, individually and in her  
9 capacity as trustee of Harrier and Falcon Trust or any  
10 person claiming to be acting as her officer, agent,  
11 servant, employee, attorneys, and/or acting in concert or  
12 invitation -- excuse me -- or participation with her or her  
13 officers, agents, servants, employees and/or attorneys,  
14 including but not limited to Edwin Hunter and any members  
15 of the law firm Hunter, Hunter and Sonnier, LLC, is  
16 enjoined from.

17 And then it comes down here and it says:  
18 Taking -- and I guess we'll look at the one, two, three,  
19 four, five -- the fifth bullet point -- taking any further  
20 action to approve or ratify the appointments of the  
21 co-trustees. Do you see that?

22 A. Yes, I see that.

23 Q. Okay. But -- I guess that language -- taking any  
24 further action to approve or ratify appointments of  
25 co-trustees -- that language is not contained in the next

1 full paragraph, is it?

2 A. No. That would seem to be redundant, so, no, I  
3 don't think so.

4 Q. Okay. My question is: It's not contained in the  
5 next paragraph, right?

6 A. No, it's not.

7 Q. And I'm going to give you a chance to answer this  
8 question. Your interpretation -- your understanding,  
9 though, of the paragraph that deals with the co-trustees,  
10 the non-bullet pointed is that -- not only can they not  
11 exercise any powers, obligations, responsibilities, or  
12 rights as co-trustees but that they can't go into the 14th  
13 JDC and take any further action to approve or ratify the  
14 appointments. That's your position.

15 A. Well, I think if their powers are suspended, I  
16 don't think they can do anything -- go into court or  
17 otherwise.

18 Q. Okay. So your reading -- your understanding of  
19 the TI is that Mrs. Marshall and the co-trustees are  
20 enjoined from exercising any power, right, duty,  
21 responsibility as a trustee of Harrier and Falcon as well  
22 as -- even going into the 14th JDC and seeking approval or  
23 ratification of the co-trustees?

24 MR. CHAMBERS: Objection; compound.

25 A. I think that or taking any action in conjunction

1 with the co-trustees, so -- whether separately or  
2 individually or if they're suspended, they can't do it  
3 separately. If they're doing it with my mother, then  
4 they're doing it in conjunction -- like the bullet point  
5 above says they're not supposed to do.

6 THE COURT: The objection is overruled.

7 Q. (BY MR. COX) And just so we're clear, this TI  
8 says Mrs. Marshall and the co-trustees cannot do anything  
9 to take any further action to approve or ratify the  
10 appointments of the co-trustees?

11 A. I think the bullet point just says taking any  
12 action. The last one says -- just talks about injunctions,  
13 so I'm not sure -- I think you're trying to tie two bullet  
14 points together. And maybe they do belong, and maybe they  
15 don't. I don't know.

16 Q. No. I'm not trying to tie any bullet points  
17 together. I'm trying to understand what your position is,  
18 sir. I understand your position as Mrs. Marshall and the  
19 co-trustees can't seek approval or ratification of the  
20 co-trustees' appointment. They're enjoined from proceeding  
21 in the 14<sup>th</sup> JDC.

22 A. I think the co-trustees are suspended for all  
23 purposes, so if that includes the 14th JDC, then it does.

24 Q. But I'm asking you: What's your position? You're  
25 saying "if," and I'm asking you what your position is.



1       A.    I don't see how they can take actions if they're  
2       suspended. That doesn't make sense to me.

3       Q.    Okay. So it's your understanding that they can't  
4       seek ratification -- the co-trustees -- can't seek  
5       ratification or approval of their status as co-trustees in  
6       the 14th JDC based on Plaintiff's Exhibit 1?

7       A.    I don't see -- I don't see anything in here that  
8       authorizes them to do that.

9       Q.    And it's not authorized; it's that they're  
10      prohibited, right?

11      A.    I don't see anything that authorizes them. I see  
12      them being suspended. I see that she's not -- my mother is  
13      not supposed to take actions in conjunction with them. So  
14      I don't see how they have a basis to do anything further.

15      Q.    Okay. Now, one of your complaints about --  
16      possible future thing that could happen is that the  
17      co-trustees could make a decision to withhold distributions  
18      in order to enrich themselves, right?

19      A.    I think that's a potential outcome, yes.

20      Q.    All right. And you understand that, basically,  
21      that is presupposing a breach of fiduciary duty by the  
22      co-trustees?

23      A.    I don't know one way or the other whether that  
24      does presuppose or doesn't presuppose.

25      Q.    Well, I mean, you understand, don't you, that a

1    fiduciary is supposed to put the interests of the  
2    beneficiary ahead of their own?

3        A.    Yes.    I would agree with that as a general  
4    proposition.    That's correct.

5        Q.    And you understand that if I'm your fiduciary and  
6    I say:    Hey, I'm doing this because it makes me more money,  
7    that's a breach of fiduciary duty, right?

8        A.    I mean, potentially, it could be.

9        Q.    Okay.    So potentially it could be a breach of  
10    fiduciary duty if I pay myself or advantage myself over my  
11    beneficiary, correct?

12       A.    I think that is potentially a breach.

13       Q.    All right.    Now, in order to do something like  
14    that, wouldn't I have to have control over the bank  
15    accounts?

16       A.    I don't know.    Probably.    That's -- that's -- I  
17    mean, that would make sense.

18       Q.    Well, I mean, come on, you don't know?    You  
19    administered Harrier and Falcon, did you not?

20       A.    Could I pay myself in kind with units that aren't  
21    in a bank account somewhere and just take the share?    Maybe  
22    I could.    Maybe there's some -- maybe there's some other  
23    valuable property I would walk off in lieu.    I don't know.  
24    Your -- your method is certainly one method.

25       Q.    No, no.    Let's back up a minute.    You used to

1 administer Harrier and Falcon, right?

2 A. That's correct.

3 Q. You don't have any signatory authority over  
4 Harrier and Falcon, do you?

5 A. I do not.

6 Q. Okay. You can't steal or take or advantage or  
7 transfer anything from Harrier or Falcon today, can you?

8 A. No. And I wasn't a trustee at that time and  
9 didn't have the rights of the trustee or the powers of the  
10 trustee at that time.

11 Q. But, I mean, you can agree with me that a simple  
12 proposition -- that if I don't have signatory authority on  
13 a bank account or possession of the stock certificates, I  
14 certainly can't do anything to transfer away assets or  
15 negotiate instruments, can I?

16 A. I think that -- my understanding is is that the  
17 bank accounts require all the signatories and all the  
18 trustees to be signatories. And I think if we look at the  
19 activities listed by the trustee, they designated one of  
20 those trustees to be the primary contact with Northern  
21 Trust. And it was not my mother; it was one of them.

22 Q. Yeah. But you don't have any personal knowledge  
23 of that. You're just reading documents that were produced  
24 in a litigation, right?

25 A. I assume they're factual.

1 Q. I mean, if we want to know the answer to that  
2 question, we shouldn't ask you. We need to ask Ms. Elaine  
3 Marshall, don't we?

4 A. No. I think you should ask the person who is  
5 designated as the primary contact whether his signature is  
6 -- whether he's a signer on that account or not.

7 Q. Well, don't you think that Ms. Marshall who was  
8 the primary signatory on the account would have an idea  
9 about whether she's added anybody?

10 A. I don't know.

11 Q. Well --

12 A. You can ask her. She's your witness, right?

13 Q. How about this: Out of those three possibilities:  
14 a co-trustee, Mrs. Marshall, or you, you're the worst  
15 option to ask about who has authority to sign accounts,  
16 aren't you?

17 A. I guess that's for somebody else to decide, I  
18 suppose.

19 Q. Now, you don't have any personal knowledge -- or  
20 can't provide the Court any personal knowledge -- as to  
21 whether or not any of the co-trustees have received any  
22 funds from Harrier or Falcon?

23 A. No. The accountings don't go far enough forward  
24 to show us that, one way or the other.

25 Q. So the answer is no, you can't provide the Court

1 any information on that question, can you?

2 A. No, I can't.

3 Q. And you have no knowledge of any co-trustee  
4 diverting, concealing, or transferring any asset of Harrier  
5 or Falcon, do you?

6 A. No. I don't have visibility to their activities.  
7 That's right.

8 Q. Now, you complained about Judge Cutrer because she  
9 is a judge in the 14<sup>th</sup> Judicial District. I mean, you  
10 understand she's not a civil court judge, right?

11 A. No. I disagree with you. She is.

12 Q. Okay. It's -- I mean, you understand she is a  
13 juvenile- and family-court judge, exclusively?

14 A. Those are the matters that she exclusively deals  
15 with. There are no specialized courts in Calcasieu Parish.  
16 They're all civil district judges. She happens to  
17 specialize in juvenile and family law which is the  
18 designation for her division.

19 Q. Right. You understand she's an entirely different  
20 division, different title, different courthouse across the  
21 alley from what goes on in the 14th Judicial District?

22 A. She's not a different type of judge. She's  
23 elected the exact same way. She falls under the exact same  
24 provisions of the judicial codes of conducted in Louisiana.

25 Q. And she's elected to handle juvenile and family

1 law?

2 A. Her division -- her division does handle that.

3 Q. One of your complaints is that there's huge  
4 amounts of money, potentially, that can be transferred or  
5 paid to the co-trustees, right?

6 A. It is an excessive fee, yes.

7 Q. Okay. Now, one of the slides that you used in  
8 opening -- or that your attorneys used in opening -- had  
9 2045 up at the top, right?

10 A. I think one of them did, yes.

11 Q. And it calculated how much money you might  
12 actually be paid in fees in 2045, right?

13 A. I believe that's correct.

14 Q. How many years away is 2045?

15 A. From today? More than -- more than 20.

16 Q. 28 years away?

17 A. 20.

18 Q. Pretty -- pretty long time, right?

19 A. I don't know that it's necessarily all that long.  
20 I mean, as you get older, it seems to get shorter.

21 Q. Right. But it's more than half the time that you  
22 and I have been alive, right?

23 A. That is correct.

24 Q. Okay. That slide. Did it take into consideration  
25 the estate taxes that were going to be taken out of it and

1 trying to calculate how much money was going to be paid?

2 A. I think you'd have to ask the expert.

3 Q. It would be important to you to get it right,  
4 though, wouldn't it?

5 A. I mean, I think the experts are going to do a good  
6 job.

7 Q. Okay. Now, you can agree with me, can you not,  
8 that whatever amount of money that fee is, it can be  
9 mathematically calculated?

10 A. The fee? Yeah. If you have all the -- if you  
11 have all the right data.

12 Q. If you have -- is there any reason that we  
13 wouldn't have the right data?

14 A. I don't know.

15 Q. Okay. Well, assuming that we can -- I guess there  
16 really wouldn't -- if we don't have the right data, there  
17 really wouldn't be any problem, would there, because we  
18 wouldn't be able to pay any fee at any time, so there would  
19 be no immediate threat or irreparable harm because we don't  
20 even have the data to calculate to figure out how much to  
21 pay the trustees, right?

22 A. Well, then -- then they shouldn't have put money  
23 in the registry of the Court if that were the case. So  
24 there's obviously an attempt to pay something.

25 Q. I'm not the one who said they didn't have all the

1 data. That was your testimony, sir.

2 A. No. I said if -- if -- it's an if.

3 Q. Correct. It is it if. And -- so I'm trying to  
4 play through the factual scenario that you deposited. Your  
5 factual scenarios -- if they don't have the data, then they  
6 certainly can't pay anyone, right?

7 A. Well, but clearly they do have data, because they  
8 clearly have tried to pay someone.

9 Q. I agree. And --

10 A. So I don't agree with your hypothetical.

11 Q. And, again, I don't want to fuss with you. You're  
12 the one that said they didn't have the data.

13 A. No. I didn't say they didn't have it. That's not  
14 what I said.

15 Q. My question is: With the data, we can  
16 mathematically calculate to the penny the amount of that  
17 fee, can we not?

18 A. Yes. I said if you've got the data, then, yes,  
19 you can.

20 Q. And we'd need to get a checkbook out if somebody  
21 made a mistake or somebody shouldn't have been paid that  
22 fee; and we can repay that amount, can we not?

23 A. No. You don't know if they still have the money  
24 or not.

25 Q. Who -- who are you talking about?



1 A. Whoever you have writing this hypothetical check.

2 Q. Okay. Well, Mrs. Marshall -- Mrs. Marshall can  
3 write that check, can she not?

4 A. I don't -- I don't know.

5 Q. I think I testified earlier that at least when you  
6 were still involved in it, she got dividends of  
7 \$120 million a year?

8 A. I don't know what she spent.

9 Q. You've known your mom for 45, 46 years. I've  
10 known her long enough to know that there's no way she  
11 spends money like that. She's a very frugal woman, is she  
12 not?

13 A. Not lately, no.

14 Q. So it's your testimony that you're concerned that  
15 if a fee is paid to the co-trustees for 2017, pursuant to  
16 the existing formula, that Elaine Marshall would not be  
17 able to cover or repay that fee?

18 A. No. I don't think that's correct.

19 Q. Okay. So you agree she could repay the fee?

20 A. No. I think your statement -- your question is  
21 incorrect.

22 Q. How is it incorrect?

23 A. Because if you're paying the fees to the  
24 co-trustees, I don't know of any indemnity agreement that  
25 my mother has to cover their losses or their mistakes or

1 their errors or any sort of e-mail policy or something like  
2 that. So you try to recover from the co-trustees  
3 themselves and whether or not you can or not.

4 Q. But you've accused Mrs. Marshall and the  
5 co-trustees of conspiring and -- have you not?

6 A. I think there is, yes.

7 Q. Aren't you seeking to hold them jointly and  
8 severally liable?

9 A. I don't know. I'd have to read it and see if  
10 that's...

11 Q. Aren't you accusing the co-trustees of aiding and  
12 abetting the breach of Ms. Marshall's fiduciary duty?

13 A. Yes, that's correct.

14 Q. So don't you understand that they would be liable  
15 for any of that together -- that Mrs. Marshall would be  
16 responsible for paying that if your allegations with  
17 respect to breaches of fiduciary duty and conspiracy are  
18 true?

19 A. I don't know one way or the other.

20 Q. All right. And you don't know one way or the  
21 other whether or not Mrs. Marshall could repay or refund  
22 any of the fees that were paid to the co-trustees?

23 A. I don't.

24 Q. Now, I guess, we know today, finally, what it is  
25 that you want out of this lawsuit, do we not?

1 A. I think we've learned long before today, Mr. Cox.

2 Q. Well, in the -401 case, you recently filed a new  
3 petition, did you not?

4 A. There was an amended petition, yes.

5 MR. COX: May I approach, Your Honor?

6 THE COURT: Please.

7 Q. (BY MR. COX) This is your recently amended  
8 petition in the -401 suit, is it not?

9 A. It looks like it is, yes.

10 Q. Now, in this, if you'll look with me at Page 3,  
11 you filed this or you purport to do this on your own behalf  
12 and for your children's benefit, do you not?

13 A. Yes, that's correct.

14 Q. And --

15 MR. CHAMBERS: Your Honor, just as an  
16 objection, counsel's mentioned several times -401 is not  
17 being heard today. We have the same objection. We're here  
18 on -404, which has to do with enjoining these trustees.  
19 And -- so if he wants to talk about the pleading in the  
20 -404, that's fine; but we object on relevance to the -401.

21 MR. COX: When you called the case to order,  
22 you called -401, -402, -403. You called us for all of  
23 them; and, even so, I think it's relevant to his motives  
24 and what's going on in this case and why he's doing what  
25 he's doing.

1 THE COURT: I'll allow the question.

2 Overruled.

3 Q. (BY MR. COX) All right. So now we know that what  
4 you're really trying to do is you're trying to disinherit  
5 your mother and your brother for your own benefit.

6 A. No, I'm not. I'm trying to enforce my father's  
7 will.

8 Q. All right. Can you turn with me to Page 44,  
9 please, sir?

10 A. Sure.

11 Q. Actually, I take that back, 43. Page 43, Section  
12 7, identifies your causes of action. You understand that's  
13 what you're asking this Court to do, right -- it's what I  
14 want the Court to do and to fix for me.

15 A. That's what it says.

16 Q. All right. And it says in Paragraph 130: In  
17 accordance with Chapter 37, Plaintiff requests this Court  
18 declare the following, right? And it lists out several  
19 things, does it not?

20 A. Yes, it does.

21 Q. If you'll turn to the next page on H, you want  
22 this Court to declare that Ms. Marshall has violated  
23 Article IX of decedent's will and that all bequest to her  
24 are revoked -- excuse me -- X -- I can't read my roman  
25 numerals.

1 A. Yes.

2 Q. All right. And that means not only do you want  
3 everything that she has today revoked, you want all past  
4 payments to her rescinded?

5 A. If that's what the will provides. I don't know if  
6 that's what it provides; but if that's what it provides,  
7 then yes.

8 Q. Well, you understand that what the will provided  
9 was -- the purpose of the MIT was to provide for the  
10 financial welfare of "my wife," Elaine T. Marshall,  
11 correct?

12 A. That was the purpose of the MIT, that's correct.

13 Q. All right. And what you're saying is: I want  
14 every bit of that -- I don't care what my dad said -- I  
15 want every bit of that revoked and rescinded and returned.

16 A. No. My dad said Article X so -- what he said in  
17 Article X -- if it applies, then it should be given its  
18 effect.

19 Q. All right. And you want it all to come back to  
20 you. You wanted it taken away from your mother and  
21 returned to you?

22 A. No. My dad wanted that.

23 Q. That's what you're asking the Court to do, right?

24 A. That's what my dad is asking the Court to do.

25 Q. Your dad's not here with us, is he, unfortunately?

1       A.    That's correct.  So there has to be a will  
2   proponent.  There has to be somebody advocating for the  
3   decedent, and that's me.

4       Q.    This is your petition?

5       A.    That's correct.

6       Q.    This is your request?

7       A.    I'm the will proponent, that's correct.

8       Q.    The second thing that you asked for is the --  
9   Pierce -- that's your brother, right?

10      A.    That's correct.

11      Q.    That Pierce has violated Article IX of decedent's  
12   will and all bequest to him are revoked.

13      A.    That's what it says.

14      Q.    You want everything that he got taken back and  
15   given to you?

16      A.    No.  That's what my dad said.

17      Q.    And you want to remove your mother from her  
18   trustee roles and take control.

19      A.    No.  That's what Article X provides.

20      Q.    And -- so it's not enough to have the money.  It's  
21   the money and the control.  That's what you want.

22      A.    No.  That's what dad says happens if you trigger  
23   Article X.

24      Q.    And that's what you're asking this Court to do.

25      A.    Yes.  We're asking the Court to interpret Article

1 X.

2 Q. Now, you complain that in the Peroxisome case your  
3 mother is trying to revoke a gift to you, correct?

4 A. That's correct.

5 Q. And I think you said that that money goes back to  
6 her?

7 A. When did I say that?

8 Q. I thought you -- or I guess -- maybe -- we agreed  
9 that it wouldn't be taken -- it wouldn't go back to Mrs.  
10 Marshall; it would go to your children if she's successful  
11 in the Peroxisome suit, right? She's not taking it back  
12 for herself.

13 A. Well -- well, first of all, you can't do that, so  
14 you can't -- you can't revoke an irrevocable trust anyway.

15 Q. And I understand you disagree with it, but the  
16 question is: It would bypass you and go to your children  
17 if she's successful. I understand -- I'm not asking to  
18 agree with me that she's right. But if she's successful,  
19 it goes to your children, not to her?

20 A. That's -- that's one option. She kind of lays out  
21 an interesting ladder of effects through Spliceosome.

22 Q. Now, on May 12<sup>th</sup> of 2017, were you drinking at  
23 the Petroleum Club?

24 MR. CHAMBERS: Your Honor, we're going to  
25 object to -- on -- some particular day Preston Marshall be

1 drinking at the Petroleum Club. This doesn't have any  
2 relevance, whatsoever, to what we're here on today. And  
3 drinking, generally, doesn't have any relevance. Service  
4 acts, bad conduct -- they're generally not allowed in  
5 Texas. It's also excluded in the -403 and the various  
6 cases that Mr. Tribble cited to the Court this morning.

7 THE COURT: Thank you.

8 Overruled.

9 A. Can you repeat the question?

10 Q. (BY MR. COX) Yes. On the evening of May 12<sup>th</sup>,  
11 2017, were you drinking at the Petroleum Club?

12 A. Yes.

13 Q. Did you become intoxicated on the night of  
14 May 12<sup>th</sup>, 2017?

15 A. No.

16 Q. Did you go home on the night of May 12<sup>th</sup>, 2017,  
17 and physically assault your wife, Anastasia Marshall?

18 MR. CHAMBERS: Your Honor, again, we're going  
19 to object on the basis that this has no relevance to any  
20 issue before the Court today. It's also the subject of a  
21 proceeding in -- a criminal proceeding. And the -- it puts  
22 the witness in a position on an irrelevant matter of having  
23 to put himself at jeopardy to answer the question.

24 THE COURT: Overruled.

25 MR. CHAMBERS: Your Honor, then we would ask



1 that the Court allow the witness to assert his Fifth  
2 Amendment right with respect to the question.

3 THE COURT: If he wants to assert that right,  
4 it's his to assert.

5 MR. COX: That's right. And I think the  
6 witness has to assert it, Your Honor.

7 THE WITNESS: On advice of counsel, I'm  
8 asserting my rights.

9 Q. (BY MR. COX) Is your actions or -- your actions  
10 on May 12<sup>th</sup>, 2017, the result of your substance-abuse  
11 problem?

12 MR. CHAMBERS: Same objection, Your Honor.  
13 This doesn't have any relevance in the -404 proceeding or  
14 the -401 and is not relevant to the hearing that we're here  
15 on today. It's also a prior specific act of bad conduct  
16 and would be excluded for that reason and also under -403.

17 THE COURT: I'm going to sustain the  
18 objection. And I think it assumes facts not in evidence.

19 MR. COX: Okay. And that's fine, Your Honor.  
20 Can I clean up one thing? In the prior question, I've been  
21 told that he had asserted his rights. And I think the  
22 answer is he needs to assert his Fifth Amendment right, and  
23 is it my understanding that --

24 Q. (BY MR. COX) Mr. Marshall, you're asserting your  
25 Fifth Amendment right against self-incrimination with

1 response to my -- not my last question -- but my question  
2 before that?

3 MR. CHAMBERS: We'd stipulated that that's  
4 what his answer would be.

5 A. Yes, that's correct.

6 Q. (BY MR. COX) Mr. Marshall, do you have a  
7 substance-abuse problem?

8 A. No.

9 Q. On the night of May 17<sup>th</sup>, did you physically --  
10 May 17<sup>th</sup> -- excuse me -- May 12<sup>th</sup>, 2017, did you  
11 physically assault your wife, Anastasia Marshall?

12 MR. CHAMBERS: Objection, Your Honor, asked  
13 and answered.

14 THE COURT: Sustained.

15 Q. (BY MR. COX) Were there other times prior to  
16 May 12<sup>th</sup> of 2017, when you physically abused or hit your  
17 wife, Anastasia Marshall?

18 MR. CHAMBERS: Objection, Your Honor. Again,  
19 this is matters under -403 that should be excluded.  
20 They're not relevant under -401 being the issue before the  
21 Court today. And they're also prior specific bad acts,  
22 generally, now -- not even specifically that they're  
23 inquiring about. It's also not specific as to what -- the  
24 question is vague as well.

25 MR. COX: If you want me to ask a more

1 specific question, I certainly can.

2 THE COURT: Honestly, I think it's pretty  
3 specific; and I'm going to overrule the objection.

4 MR. CHAMBERS: Then I will -- I believe  
5 that -- because of the pending proceeding, that the witness  
6 has to assert the Fifth Amendment right.

7 THE COURT: Well, again, it's his right to  
8 assert.

9 THE WITNESS: You want to read that question?

10 *(Requested portion read back.)*

11 A. No.

12 Q. (BY MR. COX) On the night you were married to  
13 Anastasia Marshall, did you physically assault her?

14 A. No.

15 Q. On the night of your wedding, did you lock  
16 Anastasia Marshall out on the balcony?

17 A. No.

18 Q. On the night of May 12<sup>th</sup> of 2017, did you  
19 physically harm one of your children?

20 A. No. I've never physically harmed any of my  
21 children at any time.

22 MR. COX: May I approach, Your Honor?

23 THE COURT: Please.

24 Q. (BY MR. COX) Do you recognize the person in this  
25 photo, Mr. Marshall?

1 A. Yes, I do.

2 Q. Who is it?

3 A. That's my wife.

4 Q. On the night of May 12, 2017, did you bite your  
5 wife and cause that circular mark on the face in the  
6 photograph?

7 MR. CHAMBERS: I'm going to object as  
8 irrelevant to anything in this proceeding, Your Honor. And  
9 we're far field. They've asked repeated questions in this  
10 same area, and they've gotten an answer and an assertion  
11 that -- so further inquiry into this area is not relevant  
12 or productive in this proceeding.

13 THE COURT: I've given both of you guys a lot  
14 of latitude with regards to what you're able to present.  
15 And -- so relevance objections, at this point, are really,  
16 in my opinion, weak when you guys have very little time  
17 that you're working with. And if this is how they want to  
18 spend their time, then I'm not going to find it irrelevant  
19 with regard to the objections.

20 So I'm going to allow it.

21 MR. CHAMBERS: And, Your Honor, just for the  
22 record -- oh, we'd also object under -403 and also specific  
23 acts of prior bad conduct used to impeach the witness on  
24 a -- on a matter not directly related to this subject.

25 THE COURT: Again, we don't have a jury. We

1 talked about this at the very beginning. And -- so I'm not  
2 as concerned so much about prejudice, and I'm going to  
3 overrule the objection.

4 MR. CHAMBERS: Then I would advise and  
5 instruct the witness to assert his Fifth Amendment right  
6 with result -- with respect to this specific incident.

7 A. So on advice of counsel, I assert my Fifth  
8 Amendment right.

9 Q. (BY MR. COX) And similarly with respect to the  
10 large bruise above Mrs. Marshall's right eye, did you  
11 headbutt her on the night of May 12<sup>th</sup> of 2017, and cause  
12 that injury?

13 MR. CHAMBERS: I'm going to advise you to  
14 assert your Fifth Amendment right. I'll just save the  
15 objection issue.

16 A. On advice of counsel, I'll assert my Fifth  
17 Amendment right.

18 Q. (BY MR. COX) And then one other question with  
19 respect to the, I guess -- or maybe I didn't ask it  
20 precisely: On your honeymoon in St. Johns, did you strike  
21 your wife, Anastasia Marshall?

22 A. No. That's been asked and answered.

23 Q. Did you lock her out on the balcony?

24 A. No.

25 MR. COX: Now, Your Honor, move to admit

1 Exhibit 254, which is a picture. That's Defendant's 254.

2 MR. CHAMBERS: I -- I object that it hasn't  
3 been established as a -- it looks to be quite dark. I've  
4 seen this -- I know I've personally seen it in a different  
5 format less dramatic than this. And it hasn't been proven  
6 up or established properly as a photograph for admission  
7 into evidence. It's also -401, -402, and -403.

8 MR. COX: The first question I asked him was:  
9 Do you recognize this photograph? And he said "yes."  
10 That's all you need.

11 MR. CHAMBERS: Well, that...

12 THE COURT: I'm not sure about that. I'm  
13 going to go ahead and overrule the objection. And -- but  
14 I'm just not -- I don't feel really comfortable that that's  
15 the right thing to do.

16 So I'll overrule the objection. I'll admit  
17 Exhibit 254. I don't know that it will be used in  
18 consideration, so -- I don't know if it will be --

19 MR. COX: Is there something different that I  
20 can do evidentiary -- I mean, are you telling me you're  
21 admitting it --

22 THE COURT: I don't remember the question  
23 whether -- if he recognized his wife in this photograph or  
24 if he recognized the photograph. That's really where I'm  
25 at. So we can -- we can read back the record and see --

1 MR. COX: And I don't -- I'm not -- I  
2 actually don't think it matters whether you say: Do you  
3 recognize this photograph? Do you recognize this person?  
4 I think either one of those is satisfactory for  
5 establishing the foundation that is necessary for our  
6 photograph.

7 THE COURT: I don't think so, because -- I  
8 mean, he could recognize his wife, but it could be  
9 photoshopped. So -- I mean -- I just -- I think it's a  
10 different question, and I do think it matters. I'm -- I'm  
11 admitting it, but I'm not sure -- I'm going to have to read  
12 the transcript to figure out whether or not you laid the  
13 proper foundation. I'm happy to do that now, but it's just  
14 running the clock, so I'm just trying to be efficient.

15 Q. (BY MR. COX) Does Exhibit 254 fairly and  
16 accurately depict your wife?

17 A. I don't know the answer to that.

18 Q. You -- you don't recognize that person as your  
19 wife?

20 A. That appears to be my wife in the photograph. But  
21 you asked about the depiction and other characteristics.

22 Q. And -- so you do recognize that photo as a  
23 photograph of your wife?

24 A. I recognize -- I think that looks like my wife in  
25 the photo.

1 Q. And you understand that this was attached to an  
2 affidavit that she filed in your family or criminal case,  
3 correct?

4 A. No. This is a deposition exhibit that you labeled  
5 during my deposition, that you took of me.

6 Q. And you also understand that it's a photograph  
7 that she attached to her affidavit against you, correct?

8 MR. CHAMBERS: Your Honor, I would ask that  
9 they do lay a foundation if they -- if they want to go  
10 ahead. Because this is not my recollection of the way that  
11 photograph looked. I could be wrong, but I -- if we're  
12 going to say this is the same thing that she attached and  
13 it looks the same, then I'd like to see what she attached.

14 MR. COX: Okay. I understand what the Court  
15 has said.

16 I would also like to move to admit -- but I  
17 think I need to move to admit Defendant's Exhibit 2, which  
18 is the Fifth Amended Petition from the -401.

19 Did they agree to admit it?

20 THE COURT: I'm waiting.

21 MR. CHAMBERS: I haven no objection.

22 THE COURT: Okay. Defendant's Exhibit 2 is  
23 admitted.

24 And just to be clear, Defendant's Exhibit 245  
25 was admitted. But, again -- so -- I hate to say it again,



1 so I won't.

2 MR. COX: I understand.

3 Pass the witness, Your Honor.

4 THE COURT: So it is 3:00 o'clock.

5 Would you -- would everyone like a break as  
6 much as I would?

7 MS. PACHECO: We want whatever you want,  
8 Judge.

9 THE COURT: Okay. I'd like a break, maybe  
10 for 15 minutes. And just so you're aware, I've got your --  
11 you guys at one hour -- or 120 minutes, because we took a  
12 five-minute break. In fact, it should probably be a  
13 hundred and, say, 17 minutes instead. And then as far  
14 as -- the -- so Plaintiffs have used 117 minutes and  
15 Defendants have used 73 minutes.

16 Is that what you have?

17 MR. TRIBBLE: That's what I have, Your Honor.

18 MR. COX: Agreed.

19 THE COURT: So we'll be back at 3:15. Thank  
20 you.

21 THE BAILIFF: All rise.

22 *(Break taken from 3:03 p.m. to 3:20 p.m.)*

23 THE BAILIFF: All rise.

24 THE COURT: Please be seated.

25 It's 3:20.

1 Mr. Chambers?

2 MR. CHAMBERS: Pass the witness, Your Honor.

3 MR. WEBER: Your Honor, may I ask the witness  
4 some questions subject to, of course, my special appearance  
5 without waiving that special appearance?

6 THE COURT: Absolutely. Thank you,  
7 Mr. Weber.

8 MR. WEBER: Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. WEBER:

11 Q. Mr. Marshall, my name is Scott Weber. You and I  
12 have not met before, have we?

13 A. No, we have not.

14 Q. And you understand I represent the co-trustees?

15 A. If you say you do, I believe you.

16 Q. Okay. And you talked about the Louisiana case  
17 that was filed in the 14th Judicial District Court there in  
18 Calcasieu Parish. You understand that is the lawsuit that  
19 your mom filed and you're a Defendant in that case?

20 A. There are many. You want to be more specific?

21 Q. Okay. Let's talk about the one where she asked  
22 the Court to confirm the appointment of the successor --  
23 the co-trustees. Are you familiar with that one?

24 A. Yes. There are two, so are we going to talk about  
25 both of them?

1 Q. Let's just talk about Harrier Trust, how is that?

2 A. Sure.

3 Q. Do you have Exhibit 16 -- Plaintiff's Exhibit 16  
4 in front of you?

5 A. I can get it for you. It goes from 13 to 49.  
6 You're at 16, you said?

7 Q. Yes, sir.

8 A. What's...

9 MR. WEBER: Your Honor, in the interest of  
10 time, may I approach the witness and show him my copy and  
11 ask him questions while we show this copy? Is that okay?

12 THE COURT: Sure.

13 A. Got it. There we go.

14 Q. (BY MR. WEBER) All right, sir. And you  
15 understand that Exhibit 16 -- Plaintiff's Exhibit 16 was  
16 filed in January of this year, right?

17 A. Let's see what -- this is my copy, and I have it  
18 file stamped. It says -- yeah -- the notary stamp says  
19 10th of January, 2017.

20 Q. Okay. So it's fair to say that it was filed  
21 sometime in January of 2017, isn't it?

22 A. I think that's probably correct.

23 Q. Okay. And if you would, sir, please turn to Page  
24 4. Do you see Paragraph 18 at the top of Page 4?

25 A. Yes.

1 Q. And in that, it says that Section 6.2G of the Act  
2 in Donation of the Trust permits the trustee to select and  
3 designate one or more co-trustees. And you talked about  
4 that section earlier today, right?

5 A. That was one of the sections we talked about, yes.

6 Q. And then it goes on to say: While Petitioner,  
7 Elaine T. Marshall, intends to continue to serve as trustee  
8 moving forward she has, as reflected in the attached  
9 Exhibit A, selected and designated several co-trustees in  
10 conformity with the provisions of Section 6.2G of the Act  
11 in Donations in Trust, right?

12 A. That's what it says.

13 Q. Okay. And then on the next page on the top there,  
14 Paragraph 5 -- and this is the things that your mom is  
15 asking for in this Second Amended Petition. She's asking  
16 that the Court declare that Pastor Edward Alexander, Adam  
17 P. Johnson, Dr. Wayne S. Thompson, Lilynn Cutrer, and Dr.  
18 Karen Aucoin each are properly appointed as a co-trustee in  
19 the Harrier Trust in compliance with the provisions of the  
20 Act of Donation in Trust and Louisiana law, right?

21 A. So your clients, as well as my mother, is asking  
22 for that.

23 Q. Okay. That issue is before the 14th Judicial  
24 District Court in Calcasieu Parish, Louisiana, right?

25 A. Yes. Put there by your clients, yes.

1 Q. By virtue of Plaintiff's Exhibit 16, right?

2 A. Filed by your clients, yes.

3 Q. In January of this year, right?

4 A. I would agree with that, yes.

5 Q. Okay. And you didn't sue my clients until the end  
6 of September of this year, right?

7 A. That's correct.

8 Q. And that was in this -404 proceeding, right?

9 A. Yes. That is correct.

10 Q. And that was the first time that you asserted any  
11 causes of action against them, whatsoever, right?

12 A. As named Defendants. I think that would be  
13 accurate. Certainly the causes of action -- the claims  
14 were plead...

15 Q. There were suggestions of wrongdoing earlier; but  
16 that was the first time you actually sued them was in this  
17 -404 proceeding, right?

18 A. Well, we also obtained relief with respect to  
19 those appointments prior to that.

20 Q. I didn't ask about relief, sir. I asked you --  
21 first time you sued them was in this -404 proceeding,  
22 right?

23 A. I think we've covered that this was the first time  
24 they were named defendants in this proceeding is correct.  
25 Certainly the claims, as we discussed the claims, the

1 causes of action, the relief, was all prior.

2 MR. WEBER: Objection; nonresponsive after  
3 the word "correct."

4 THE COURT: Sustained.

5 MR. WEBER: Move that that nonresponsive  
6 portion be stricken.

7 THE COURT: It is stricken after the word  
8 "correct."

9 MR. WEBER: Thank you, Your Honor.

10 Q. (BY MR. WEBER) Now, you mentioned that there was  
11 some sort of hearing tomorrow in the 14th Judicial District  
12 Court. Do you remember that?

13 A. No. You're incorrect.

14 Q. What's incorrect?

15 A. Tomorrow was a status conference, telephone call.

16 Q. Okay. So if -- if you said something about a  
17 hearing earlier, then it's really just a status conference,  
18 right?

19 A. No. I don't think I said it was a hearing. If  
20 you want to go back, we can look at it. But I think we  
21 were clear that it was a status conference.

22 Q. And do you have any idea who requested the status  
23 conference?

24 A. Your clients.

25 Q. And what's that based on?

1       A.    Communication I've seen from your cocounsel in  
2 Louisiana.

3       Q.    And do you have that communication?

4       A.    I had it in my possession, yes.

5       Q.    But you haven't produced it here?

6       A.    I don't believe there's been any request for  
7 production for it here, no.

8       Q.    So if the evidence is that Judge Wilson requested  
9 the status conference, you would disagree with that?

10      A.    I would. That she -- she set it at the request of  
11 the parties.

12      Q.    Now, is it your position that by moving forward  
13 with the summary judgment in the -- and I'll just refer to  
14 it as the Harrier Trust case in the 14th Judicial District  
15 Court. Can we agree that that's what I'm referring to --  
16 what I'm talking about?

17      A.    Okay. Sure.

18      Q.    So is it your position that by moving forward with  
19 the summary judgment in that case, the co-trustees would be  
20 violating the terms of the current temporary restraining  
21 order?

22      A.    I think doing anything, whether moving forward or  
23 doing anything else while they're suspended would be --  
24 would be contrary to what's been ordered by this Court.

25      Q.    So the answer to my question is: Yes, Mr. Weber.

1 If they move forward with that summary judgment motion,  
2 they would be violating the terms of the temporary  
3 restraining order.

4 A. No. I think I gave you my answer.

5 Q. Yes. They would be violating the terms of the  
6 temporary restraining order. Is that your position?

7 A. I think that I gave you my answer which is that  
8 whether they are moving forward there or they're moving  
9 forward doing other things that all of those things are a  
10 violation of this Court's order.

11 Q. I'm not asking you about doing all other things.  
12 I'm asking you simply: By moving forward with the summary  
13 judgment in the 14<sup>th</sup> Judicial District Court, is it your  
14 position that the co-trustees would be violating the terms  
15 of this temporary restraining order?

16 A. Whether they're doing that or doing other things,  
17 while suspended, that's violating -- violating this.

18 Q. So the answer to my question is: Yes, Mr. Weber.  
19 They would be violating the terms of this temporary  
20 restraining order if they move forward with the summary  
21 judgment in the 14th Judicial District Court.

22 MR. CHAMBERS: Objection; asked and answered.

23 MR. WEBER: I can't get a straight answer,  
24 Your Honor.

25 MR. CHAMBERS: I think he's given a straight



1 answer, and he's given an explanation, which the witness is  
2 entitled to do after agreeing...

3 THE COURT: I'm going to overrule the  
4 objection.

5 A. I don't have anything else to tell you, Mr. Weber.

6 Q. (BY MR. WEBER) It's really quite simple. It's a  
7 "yes" or "no" question. Is it your position -- and I'm not  
8 asking why or anything like -- your lawyers can ask you  
9 why, if they want. My question is really quite simple: Is  
10 it your position that by moving forward with the summary  
11 judgment in the 14th Judicial District Court in Calcasieu  
12 Parish, Louisiana, the co-trustees would be violating the  
13 terms of the temporary restraining order in place right  
14 now?

15 A. I think moving forward with that or moving forward  
16 with anything else, it would be violating this Court's  
17 order.

18 Q. In the interest of time, I'll just take that as a  
19 "yes."

20 Have you read any of the appellate briefing  
21 that your lawyers have filed in connection with the appeal  
22 that is currently before the -- one of the Houston courts  
23 of appeal?

24 A. I'm sure I've looked at it.

25 Q. And were you aware of statements made in that

1 briefing to the court of appeals that the temporary  
2 injunction that was entered in July does not enjoin the  
3 alleged co-trustees?

4 A. I haven't seen that. If you want to look, we can  
5 read it.

6 Q. So as we sit here right now, you don't have any  
7 recollection of taking that position in front of the court  
8 of appeals?

9 A. No. I know there's been amendments and all sorts  
10 of the things filed, so I don't -- if we want to look at  
11 the latest filings, we can read from it, I suppose.

12 MR. WEBER: Pass the witness, Your Honor.

13 MR. CHAMBERS: Pass the witness, Your Honor.  
14 I mean, I assume I'm going last. If he's got something  
15 else he wants to do, then I'm not finally passing him. I  
16 don't think he gets the right to do that.

17 MR. COX: If he doesn't redirect him, I don't  
18 think I get a chance to go again, Your Honor.

19 THE COURT: Thank you for your testimony, Mr.  
20 Marshall. You're excused at this time.

21 MR. PRESTON MARSHALL: Thank you, Your Honor.

22 THE COURT: It's 3:30.

23 MR. LAHAD: Your Honor, may I call Mr. Rob  
24 Hancock at this time?

25 *(Witness duly sworn.)*

1 MR. HANCOCK: I do.

2 THE COURT: Thank you.

3 MR. LAHAD: Your Honor, may I question him  
4 from right here? It's a little cozy. May I question from  
5 right here?

6 THE COURT: Of course.

7 MR. LAHAD: Thank you.

8 **ROB HANCOCK,**  
9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 BY MR. LAHAD:

12 Q. Could you please introduce yourself for the Court?

13 A. My name is Rob Hancock.

14 Q. Mr. Hancock, you've been retained as an expert by  
15 Preston Marshall in this hearing, correct?

16 A. Yes.

17 Q. And you've also been retained as an expert in the  
18 -401, -402, -403 grandchildren's consolidated proceeding;  
19 is that right?

20 A. Yes.

21 Q. Now, specifically, what were you asked to do with  
22 respect to Harrier and Falcon Trust co-trustee  
23 compensation?

24 A. I was asked -- for both the trusts, I was asked to  
25 take the appointment of trustees' documents and the

1 formulas in there for trustee fees and -- using -- at my --  
2 at my discretion -- the available facts and reasonable  
3 assumptions -- project those forward in time for a number  
4 of years until Preston's youngest child turns 35. So I've  
5 got a multi-year protection of those fees.

6 Q. And before we get to that, would you please give  
7 the Court some background on your education, experience,  
8 and qualifications?

9 A. University of Texas at Austin Business School,  
10 1975, with a degree in accounting. I'm a CPA. I have  
11 multiple business valuation accreditations. I'm certified  
12 in financial forensics -- some other accreditations that  
13 help in my day-to-day practice. I've been doing this for  
14 over 42 years, all in Houston. Serving clients in the Gulf  
15 Coast area and other areas of the country. I'm also --  
16 during that time, I served as a director of public and  
17 private companies. From time to time, I served upon a  
18 panel or as a sole arbitrator on -- what I call -- private  
19 hearings. So that's -- that's my business life. I'm a  
20 partner in the Hancock Firm, and we do -- oh, I've been  
21 practicing as a CPA for over 42 years. My specialty has  
22 been, for the past 25 years, at least, business valuations  
23 and all the subsets of business valuation.

24 Q. Can you ballpark how many times you've testified  
25 in court as an expert?

1       A.    Well, the first time was in -- if my recollection  
2   is correct, 1983, so that's quite a few years so --

3       Q.    Hundreds of times?

4       A.    No.  Not hundreds of times.  Two or three times a  
5   year over that period of time, maybe, 70, 80, 90.  I don't  
6   really keep count.

7       Q.    Going back to the co-trustee compensation here,  
8   you calculated the -- the -- or you projected the  
9   going-forward compensation for the co-trustees.  I want to  
10  show you a slide.

11               MR. LAHAD:  It's cut off from the top.  There  
12  it is.

13       Q.    (BY MR. LAHAD)  What are you showing us here with  
14  respect to these numbers in this slide called Harrier Total  
15  Fees?

16       A.    That is the present value, meaning, taking all of  
17  those fees that I projected on an annual basis now, some 30  
18  or 35 years -- or, actually, about 28 years.  And I made  
19  the calculations and brought them back to the present  
20  value, meaning today's value.  Based upon one of the  
21  formulas which says it's -- where it says "Trust Assets,"  
22  that's where you add up the three components that's been  
23  mentioned several times here, .3 percent of the Marital  
24  Income Trust assets, 30 -- 3 percent, rather, of the other  
25  assets, plus 5 percent of the gross receipts.

1           And then that's calibrated against, what I  
2 call, the ceiling in the -- but not to exceed 40 percent of  
3 gross annual receipts of the trust.

4           So those are the first two quantitative  
5 columns. But the far right is the answer page. In other  
6 words, it's the aggregation of which -- whatever fee was  
7 applicable for each year is added. It's the sum for all  
8 those 28 years in the right-hand column.

9           So on the Harrier case, it's a combination --  
10 I've got very detailed schedules -- but for the early  
11 stages of that future period -- if the -- by the virtue of  
12 the calculations, the fee was based upon gross Trust  
13 receipts. In the year 2030 where I -- not me -- but the  
14 Bureau of Labor Statistics, life expectancy tables, would  
15 actuarially predict Mrs. Marshall's death. Though, based  
16 upon the terms of the appointment of trustees or  
17 co-trustees, that calculation flips to be the formula  
18 calculation where it's the three components you add  
19 together. So when you look at that 90 million or the  
20 160 million or any -- or the other two calculations, it's a  
21 combination of all those years; and it takes -- it takes  
22 the appropriate number that was calculated for that.

23       Q.   Well, let's drill down a little more on that. So  
24 respect to this 90,232,172-dollar number, base case, no  
25 greater than 40 percent, what -- what specifically are you

1 showing us with that number?

2 A. That's presumed that the trust distributes its --  
3 its proceeds, its receipts.

4 Q. And how far forward are you projecting this?

5 A. To -- I think it's the year 2035 -- if I can check  
6 here. It's the year the youngest -- 2045. That's the year  
7 I calculated the youngest child turns 35.

8 Q. What's the difference between this \$90 million and  
9 this 160 million-dollar number?

10 A. There's not -- the degree of distributions in that  
11 second row there, there's 40 percent of this that have  
12 never distributed.

13 Q. And you say reinvesting 60 percent. What do you  
14 mean by that?

15 A. It's just not -- it's not distributed.

16 Q. So that's the trustees or co-trustees'  
17 accumulating income --

18 A. Yes. That's correct.

19 Q. Okay. What are you showing us here with this  
20 "Elaine Early Death" 140 million-dollar number?

21 A. This is the same formulas as the first two. The  
22 three and four mirror those formulas with one exception.  
23 It's -- to demonstrate a point, I arbitrarily selected --  
24 not the age -- the 87 or 88 -- but the age of 80 for her  
25 passing -- her hypothetical passing -- and demonstrated

1 that the numbers -- because of the distribution of the  
2 Marital Income Trust assets, the fees -- just by simple  
3 math -- my simple math -- become higher.

4 Q. And these numbers in the final column: 90 million,  
5 160 million, 140 million, and \$282 million, just to be  
6 clear, is that what the trust -- the trustees are going to  
7 get paid?

8 A. No. That's the -- no -- that -- those -- I have  
9 discounted those and give those -- what I call a pretty  
10 substantial financial haircut. In one case, it was 70 or  
11 75 percent from what the nominal -- what I call, and any  
12 financier would call, the nominal future dollars. In other  
13 words, you -- I think someone here in the courtroom said  
14 there's \$29 million that -- paid out in one year. When  
15 that was said, I went back and looked at it and I said:  
16 Oh. That was the year 2045, but that's not discounted.

17 Q. Okay. So these reflect discounted amounts as to  
18 --

19 A. Those are discounted.

20 Q. So this is not -- have these numbers -- reflect a  
21 significant discount over what the trustees will actually  
22 get paid over that time period?

23 A. That is correct. They're discounted by a rate  
24 that I developed that is a risk-inclusive rate. And -- so  
25 there's not only time, value, money but just certain risks



1 that I felt were appropriate.

2 Q. So the amount of money the trustees actually get  
3 over this time period is significantly greater than those  
4 numbers that we see. Is that fair?

5 A. Very significantly greater.

6 Q. And, again, you arrived at these figures using  
7 the -- the formula that's in the compensation -- excuse  
8 me -- the compensation formula that's in Harrier and Falcon  
9 trustee appointment documents from December, 2016, correct?

10 A. Yes.

11 Q. Okay. And your calculations are set forth in an  
12 expert report from the -401, -402, -403 matters, correct?

13 A. Yes.

14 MR. LAHAD: I'll provide a copy of it, if I  
15 may.

16 THE COURT: Thank you.

17 MR. LAHAD: You have a copy, right?

18 Q. (BY MR. LAHAD) Mr. Hancock, this is your report  
19 from June of 2017, correct?

20 A. Correct.

21 Q. And that was served in the -401, -402, -403 case,  
22 correct?

23 A. Yes.

24 Q. Okay. Going back to --

25 MR. LAHAD: Oh, that slide.

1 Q. (BY MR. LAHAD) Can you give us the  
2 non-discounted figures for these?

3 A. Yes. Just give me a minute. That's on Harrier?

4 Q. Yes, for Harrier.

5 A. Well, the non-discounted figure is 340 million and  
6 change.

7 Q. For the -- for the 90 million?

8 A. Yes.

9 Q. What's the non-discounted for the 160?

10 A. For the 160. Bear with me. 657,000 --  
11 657 million -- excuse me.

12 Q. 657 million. So on a non-discounted rate, if the  
13 trustees accumulate the income and not -- do not distribute  
14 it, they're going to get paid somewhere along the lines of  
15 \$657 million over that time period --

16 A. Yes.

17 Q. -- is that right?

18 A. In the future, yes.

19 Q. You said for the base case, if they do distribute  
20 the income over that same time period, the trustees are  
21 going to get paid -- you said 340 or so million?

22 MR. COX: Objection; leading.

23 A. Yes. Just --

24 THE COURT: Overruled.

25 A. -- go back since I left that page -- 340 million

1 and change.

2 Q. (BY MR. LAHAD) And just for sake of completeness,  
3 can you give us the non-discounted numbers for the early  
4 death assumption?

5 A. Sure. Associated with 140 million, 429 million --

6 Q. Yes, sir.

7 A. -- and associated with the 282 million in the  
8 bottom right-hand corner -- some 954 million.

9 Q. I'm sorry? Which one is that?

10 A. The last one.

11 Q. So \$954 million?

12 A. Yes.

13 Q. And for the Elaine Early Death without the  
14 reinvestments, what's the non-discounted amount there?

15 A. Yeah. Going back to that, it's 429 million and  
16 change.

17 Q. And in the base case -- the first two rows --  
18 that's, essentially, Mrs. Marshall passing at 87 years old,  
19 correct?

20 A. Yes.

21 Q. Why did you use 87?

22 A. That's what the actuarial tables tell me --  
23 expected -- life expectancy is for a female, nonsmoker.

24 Q. And what's the quote, unquote, early death age?

25 A. That's -- that's something I just arbitrarily

1 selected to demonstrate that if she hypothetically passes  
2 at an earlier date than that, the fees structure changed  
3 just by the nature of the formula.

4 Q. What's that date? What's that age, rather?

5 A. I selected 80.

6 Q. 80?

7 A. Yeah.

8 Q. Now, you understand that Mrs. Marshall's expert,  
9 Mr. Balcombe, has had an opportunity to review and  
10 criticize your report, correct?

11 A. Yes.

12 Q. And, Mr. Balcombe, prepared his own report in  
13 rebuttal to your report, correct?

14 A. Yes, he did.

15 Q. Do you know what criticisms he has with respect to  
16 your calculations here?

17 A. Yes, I do. I have a copy of his report here in  
18 front of me.

19 Q. Could you briefly summarize for the Court what  
20 criticisms Mr. Balcombe has and what responses you may have  
21 to those criticisms?

22 A. Sure. There was a -- he had a criticism of some  
23 growth and discount rates that I had a -- I had a 5-percent  
24 growth rate on some of the trusts assets and a  
25 6-and-a-half-percent discount rate. And he criticized

1 those for being too high, in one instance, on growth and  
2 too low, in once instance, in the discount rate. So I just  
3 took that as being -- not a challenge or correction that I  
4 made some mistake in, you know, following the appointment  
5 of the formula -- the appointment of the co-trustees --  
6 it's just he thought there was a better number. He had  
7 also commented -- and rightly so, quite frankly -- that one  
8 of the -- I used a -- in projecting the future receipts for  
9 the trust, I used a six-year rolling average. And he  
10 correctly pointed out that I should have, perhaps, given  
11 consideration to \$100 million that happened in that time  
12 period that may be non-recurring and shouldn't be expected  
13 to occur again. I think it's a good comment. I don't  
14 think it has an absolute answer in terms of the specific  
15 dollar amount effect on my calculations, if any at all; but  
16 I presently have that under consideration.

17 Then he also, if I recall correctly,  
18 criticized me for using my valuation of Trof and Ribosome  
19 ownership interests in some of my calculations. In fact,  
20 when I used the calculation -- when I did the calculations  
21 here -- excuse me -- my starting point were the asset  
22 values -- the same asset values that the co-trustees used  
23 when they calculated the 2017 trustee fees, to the dollar.  
24 So I think he was, for some reason, off point on that.

25 He also made a comment that -- when I looked

1 at 2016 distributions, which I had pegged at \$18 million  
2 even, there's a question whether it's \$18 million even or  
3 another \$482,000. It should have been \$18,482,000. And  
4 I'm presently looking for that to see -- in both those  
5 cases, whether it's the 100 million or the 482,000, I don't  
6 think there's a -- at the end of the day -- if those turned  
7 out to be at an absolutely true whole numbers -- which I  
8 don't think that's exactly how it works -- I don't think  
9 it's going to be that significant of a -- of a change to  
10 those numbers.

11 So the only other comment he made was just  
12 something that was brought up, you know, earlier today. I  
13 heard something about -- that -- the expert -- I think  
14 they're talking about me -- didn't have an estate tax piece  
15 in there upon the termination of the Marital Income Trust  
16 in -- what I had pegged it -- I think the year 2035 --  
17 2030.

18 And -- so, I think -- and I don't completely  
19 fault Mr. Balcombe for making that comment; but he did have  
20 a little bit of a leap of faith because he -- he took it  
21 upon himself to say that I made an error -- that my  
22 omission was an error. My -- actually, my omission of any  
23 estate tax was intentional and considered. And -- so --  
24 but I'll grant to him he didn't know what my rationale was  
25 for that, so I didn't include it in my report.

1 Q. What was your rationale for that, then?

2 A. Well, it's -- the rationale is the result of the  
3 methodology that I applied, because I had -- almost every  
4 day in my office, I have to value future events or future  
5 things. And -- so I went through the process on this  
6 estate tax issue for the dissolution of the Marital Income  
7 Trust by -- and the associated potential estate tax -- by  
8 going through a process that starts with: What am I  
9 dealing with here? It's global. Is it an expectancy? Is  
10 it a contingency? Is it a guarantee? Is it a contract  
11 that's rock-solid -- if it's going to happen 7 -- you know  
12 14 or 17 years from now? And I characterized it as being  
13 the closest thing for -- my quantitative analysis would be  
14 characterizing it as a -- as a contingency, which may sound  
15 funny because you're talking about an estate tax, but we  
16 are talking about something that's going to happen in the  
17 future. And -- so whenever I tax something that's a  
18 contingency, I not only use my experience and training as a  
19 CPA business valuator, but I also look to some of the  
20 standards that I have to abide by as a CPA. And one of  
21 those I've looked at -- as I always do in these kind of  
22 cases, is the Financial Accounting Standards rule for  
23 accounting for contingencies which asks someone like  
24 myself, or a CPA that's doing an audit of financial  
25 statements, as the case may be, to rank or characterize

1 contingencies depending on the degree of certainty about  
2 those contingencies. And -- so I gave that -- I gave it a  
3 ranking of -- somewhere between possible and probable. And  
4 those two words have some meaning in the literature and our  
5 standards. The other choice of ranking it is remote. And  
6 I did not think that it was remote. I thought it was  
7 somewhere between possible and probable.

8           So if -- the way those rules work is that if  
9 something is considered to be possible, then you don't even  
10 make an attempt to quantify it. If something's probable --  
11 if a contingency is probable, which is more likely than  
12 possible -- I won't go into the gory details of all the  
13 descriptions on it -- then the business valuator or the CPA  
14 that's working on all the financial statements will, then,  
15 embark on an attempt to quantify that contingency, if  
16 possible. And -- so I said: Well, for the purpose of  
17 this, I'm just going to presume, hypothetically, it is  
18 probable and not just possible. And the reason I felt like  
19 it was probable is because the -- the -- the tailwinds are  
20 going in the direction of not having an estate tax. Or if  
21 there's going to be an estate tax, it's going to be  
22 significantly altered from what it is today in terms of  
23 lifetime advancements, the tax rate, phasing it out  
24 altogether or who knows what.

25           So that's why I said -- is it -- you know,



1 and -- so if it's probable, I'd have to say yes, the estate  
2 tax is going to exist; and, yes, it will be at 40 percent.  
3 And I could not, quite frankly, get there. But then I  
4 said: Okay. But if it -- if that's true -- if I said --  
5 just assume for a minute that it's -- that's a possibility,  
6 how would you quantify it? And -- so I, you know, went  
7 through that intellectual exercise. And I said: Well,  
8 we're talking about the year 2030. And if there's an  
9 estate tax at 40 percent, there may or may not be a  
10 ten-year payout. And then the ability to -- or whether or  
11 not there's a -- you know, if there's not a ten-year  
12 payout, how would one pay it? And -- so in many situations  
13 on estate taxes, there's, you know, where you have an  
14 illiquid estate, assets are sold. So as soon as I went to  
15 the issue of -- would there be a sale of assets to help  
16 satisfy an estate tax, I went back to the four corners of  
17 the appointment for the co-trustees and said: Oh. There's  
18 a -- there's -- part of the formula is gross receipts.  
19 And -- so I'm going: Okay. If there's a sale to satisfy  
20 estate taxes, then that -- those proceeds would probably go  
21 to the gross receipts. And you get into all these  
22 infinite, circular calculations that -- there's so many  
23 different variables, it's almost impossible to quantify and  
24 put one together.

25 For example, if Ms. Marshall dies and the

1 decision was to explore the possibility of selling some  
2 assets, that would trigger the -- a due diligence period of  
3 trying to just make it to market and liquidate those  
4 assets. And -- so it's not just whether they can sell some  
5 or all of the assets, but when and -- and to whom. So  
6 there's just -- I felt like it was just rank speculation at  
7 the end of the day to quantify an estate tax. I was also  
8 -- my final comment about that is I was also influenced by  
9 the fact that whatever I might quantify, if there was a  
10 quantification, is that those years that -- are out from  
11 2030 to 2040, those ten years where we might have a payout,  
12 those dollars -- if there's a hundred dollars in the year  
13 2035, it's got about a 70-plus percent discount in it. So  
14 it's -- I'm going: Okay. It's just -- it's too  
15 speculative for me to make that call. Now, that's -- I'll  
16 grant you the math is a little tricky and the logic and the  
17 rationale is even more difficult, but I got to make tough  
18 calls every day and that's the call I made.

19 Q. Let me ask you: Your trustee compensation  
20 figures, the discounted and the non-discounted, how  
21 dependent are those figures on that compensation on the  
22 number of trustees that are serving?

23 A. As far as I could tell, it's not.

24 Q. So these -- the compensation figures -- \$90  
25 million -- that's -- that's the compensation or the

1 discounted compensation whether it's one co-trustee or two  
2 or three or however many --

3 A. Right. Right. And I say that because my  
4 interpretation of the contract is it's saddling on the  
5 issues, so, I mean, it's just -- it's paid.

6 MR. LAHAD: Pass the witness, Your Honor.

7 THE COURT: It is 3:52.

8 Mr. Cox?

9 MR. COX: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. COX:

12 Q. Good afternoon, Mr. Hancock.

13 A. Good afternoon.

14 Q. You do not have any opinion on what a reasonable  
15 compensation for the co-trustees would be, do you?

16 A. No.

17 Q. Now, your calculations -- you said you based them  
18 on when Ms. Marshall dies. Part of the calculations that  
19 we had up here were based on two different times that she  
20 might die, correct?

21 A. Yes.

22 Q. Okay. And one of those was when she was 87 or 88  
23 and the other one was when she was 80 --

24 A. Yes.

25 Q. -- right?

1 A. Yes.

2 Q. All right. Now, if I told you to leave the  
3 building and take an immediate right, how long do you think  
4 you'd walk before you took a right -- 30 seconds?

5 A. Probably less than a second, because as soon as  
6 I'm out the door, I'm taking a right turn.

7 Q. Okay. So we can agree, then, that if Ms. Marshall  
8 is 75 today, her death at 80, 87, or 88 is not an immediate  
9 threat to us, is it?

10 A. I don't know what you mean by "threat," but it's  
11 not imminent is the way I would express it. I would agree  
12 with that, yeah.

13 Q. I'll take that word that it's not imminent.  
14 That's our -- that's your testimony that her death is not  
15 imminent; and these calculations that you're talking about,  
16 those are not imminent. Those are off in the future,  
17 correct?

18 A. No. My calculations are -- as I said: They're  
19 present value dollars based upon, you know, all of the  
20 factors I dialed into it. That doesn't change the answer  
21 that I gave you that I don't believe her death is imminent,  
22 but I don't -- you know -- that's -- I certainly didn't  
23 presume so when I made those calculations.

24 Q. All right. Now, today no fee payment has been  
25 made out of the Harrier Trust, correct?

1       A.    I don't know. All I know is I have -- actually,  
2   have in front here the -- the co-trustees made calculations  
3   of the 2017 fee payment. It was expected to be before they  
4   chewed it up at the end of the year, some 185,000. I -- I  
5   heard some testimony here that it went in an escrow  
6   account, but I don't have any personal knowledge.

7       Q.    Okay. Other than what's in the escrow account,  
8   may or may not be an escrow account, you're not aware of  
9   any other payments being made out of the Harrier or Falcon  
10  Trust, correct?

11      A.    No. Just to be clear, I didn't investigate that,  
12  so I don't really know.

13      Q.    Fair enough. Now, you haven't made a damage  
14  calculation in this case, have you, sir?

15      A.    Good question. I don't know. I haven't thought  
16  about that. The way I just made these calculations -- I  
17  tried to help the Court.

18      Q.    Okay. Well, let's see if we can think about that  
19  a little bit more together. You agree with me that the  
20  damage would be the difference between a --

21      A.    And I apologize for interrupting you. I didn't  
22  know if I was -- I didn't know I was in a damage hearing  
23  here, so -- I thought I was in a temporary injunction  
24  hearing -- that something that I say here might have some  
25  influence on the judge --

1 Q. Okay.

2 A. -- so that's why I answered the way I did.

3 Q. We're going to get to that. We're going to get to  
4 that, okay? But the damage would be calculating the  
5 difference between an appropriate or legal fee; and, I  
6 guess, the calculations that you've made, correct? You had  
7 deducted anything for what you believe an appropriate fee  
8 would be?

9 A. You said "legal fee," and that threw me off.  
10 Appropriate legal fee?

11 Q. An appropriate under-the-law fee. You're not  
12 offering --

13 A. Oh -- oh --

14 Q. -- an alternative fee, are you sir?

15 A. I don't think so.

16 Q. You're not trying to give us an opinion about what  
17 a reasonable fee would be.

18 A. Correct.

19 Q. And if there were a reasonable fee, it would need  
20 to be deducted from the numbers that you have identified,  
21 correct?

22 A. I see what you're getting at now. So let me think  
23 about that answer. That sounds -- that sounds right, yeah.

24 Q. Sounds fair?

25 A. Sounds reasonable, yeah.

1 Q. Sounds reasonable. Okay. Good. All right. Now,  
2 can we agree that the fee, as structured for both Harrier  
3 and for Falcon, is mathematically calculable?

4 A. I hope so. I did it, so did the co-trustees.  
5 They used -- I used the same formula they did so, yes.

6 Q. Right. That's exactly what you did, and what you  
7 were offering here is you took -- you monetized. You took  
8 a pecuniary measure and told us how much this fee would be  
9 in dollars and cents and then discounted it back to today's  
10 value.

11 A. Correct.

12 Q. In simple terms, right?

13 A. Yes.

14 Q. Okay. Now, there's lots of testimony about what's  
15 probable, possible and possible, probable and --

16 A. And remote.

17 Q. -- whatnot with respect to the estate taxes,  
18 right -- and remote, right?

19 A. Right.

20 Q. Okay. But, you know, you've heard the saying,  
21 haven't you, that the only thing certain in life is death  
22 and taxes, right?

23 A. And President Truman holding up the Chicago  
24 Tribune that says: Dewey beats Truman. You know, some  
25 things are said, but not -- don't pan out.

1 Q. Well, pretty extraordinary. No one believed that  
2 Truman was going to win, right?

3 A. That's -- that's right.

4 Q. Okay.

5 A. Great moment in history -- political history,  
6 anyhow.

7 Q. That's right. And that's -- that's the purpose  
8 behind the saying of: Nothing changes but death and taxes,  
9 right? You always have to deal with those.

10 A. So say Will Rogers and Mark Twain.

11 Q. All right. And I understand that you think it's  
12 remote, possible, probable. But whatever it is or it  
13 isn't, you have not deducted anything from your  
14 calculations to account for any estate taxes, whenever that  
15 may come, be it 8, 10, 12, 15 years down the road, correct?

16 A. Not specifically. But as I mentioned before,  
17 indirectly I felt comfortable with the notion that my -- as  
18 you get out in those future years, the discount rates are  
19 so heavy. In one case, as I mentioned, 75 percent that --  
20 it made me feel better about my calculations. I will  
21 certainly say that.

22 Q. When did you come up with this theory or this  
23 explanation -- or, I guess let me ask it this way -- you're  
24 theory or explanation why -- about why you didn't take into  
25 consideration or deduct anything for the estate taxes --



1 that's not anywhere in your report, Exhibit 72?

2 A. It's -- it's not.

3 Q. All right.

4 A. And that's what I mentioned about -- why I didn't  
5 necessarily fault Mr. Balcombe for -- he said some things  
6 about -- I ignored the testimony of Mickey Davis and what  
7 have you. But aside from that, that's why I didn't fault  
8 him for saying, you know -- he acted like I ignored it.  
9 And I'm telling you today I didn't.

10 Q. And -- I mean, when did you come up with this  
11 theory or -- I mean, have you had enough time to get what  
12 --

13 A. It's not --

14 Q. -- you think is a considered opinion on that  
15 subject?

16 A. It's not a theory; it's a methodology. As I  
17 mentioned, it's not just Rob Hancock's methodology based  
18 upon my credentials; but it's also codified substantially  
19 in the Financial Accounting Standards Board. Some of the  
20 things I mentioned in number five was issued in 1975.

21 Q. So --

22 A. But very early on, I made the call because I was  
23 directing my team on these calculations. We realized it  
24 was an issue. That happened a long time ago, well before I  
25 issued the report.

1 Q. So the answer to my answer is: Yes. You've had  
2 plenty of time to consider it and think it through and be  
3 careful about, right?

4 A. Absolutely.

5 Q. Okay. All right. And have you looked at any of  
6 the testimony about what Mr. Davis has said about his  
7 anticipation about taxes and how they're going to be paid?

8 A. No. Because he wasn't running the calculations.  
9 I had -- I had to make that call, regardless. I'm -- he's  
10 got a great reputation in the community. I'm not  
11 besmirching his capability. He's got a great reputation,  
12 but I did mine because that was just one piece of a lot of  
13 factors that went into my calculation.

14 Q. Well, it would be important for you to know  
15 whether Mr. Davis thinks it's remote, possible, probable,  
16 maybe possibly going to be an estate tax at some point in  
17 the future.

18 A. Quite frankly, I wouldn't think that's his  
19 expertise in terms of that being number five or all that  
20 I've come to learn in my training and experience on valuing  
21 a future event.

22 Q. Well, let me ask you one of these things: When  
23 you were carefully considering this, I heard you give the  
24 opinion that if, as a result of the death of Mrs. Marshall,  
25 there needs to be a sale of assets, then that's going to

1 count as a gross receipts of the Harrier Trust, right?

2 That's your testimony?

3 A. Yes.

4 Q. And that could inflate the things, right, could  
5 cause them to pay a lot more in co-trustees fees', right?

6 A. Yes.

7 Q. But that's absolutely not true, is it, sir?  
8 Because if those assets are sold, they're going to be sold  
9 at the MIT or the estate level. They're not going to be  
10 sold out of Harrier. They're going to be sold before they  
11 ever get to Harrier, so you're absolutely incorrect, aren't  
12 you.

13 A. Well, there's -- I don't have the agreement in  
14 front of me, but there's two references to gross receipts  
15 in the agreement. One says: Gross receipts excluding  
16 principal distributions. And there's another piece, and it  
17 says: Just gross receipts. And without going beyond the  
18 boundaries of the four corners of the document, I took him  
19 literally for just meaning that they're not defined terms  
20 in the agreement.

21 Q. All right. Well -- but don't you understand --  
22 and if you want to -- there's probably a document in front  
23 of you that's P-12. That's the Harrier Trust appointment  
24 of the co-trustees.

25 A. I've got it here myself.

1 Q. Okay. And you understand that what it says is  
2 5 percent of the trust receipts, right; and that trust is  
3 the Harrier Trust, is it not?

4 A. Yes.

5 Q. Okay. So that clears that up that maybe you  
6 haven't had enough time to really think all this through,  
7 have you?

8 A. Clears what up?

9 Q. It clears up as to where the sale and where the  
10 gross receipts are going to take place, doesn't it?

11 A. Right. It goes to the issue of what is -- what,  
12 ultimately, is available and when it would be distributed,  
13 especially if there's a ten-year plan of tax payments on if  
14 and when it was distributed to the Harrier Trust.

15 Q. Right. And if it has to be paid by the estate,  
16 it's not going to be a sale or gross receipt by the Harrier  
17 Trust, correct?

18 A. It will ultimately come into the Harrier Trust  
19 because my calculations go out to the age when Preston's  
20 youngest daughter turns 35.

21 Q. Correct. It will be out, and it won't be a gross  
22 receipt. It would be something that would be a fee basis  
23 for the Harrier co-trustees, right?

24 A. That's exactly my point. And this -- I don't  
25 believe it's calculable. I can't calculate it for all --

1 all of the multitude of reasons I mentioned in answers to  
2 Mr. Lahad's questions?

3 Q. So is it your opinion that everything in the MIT  
4 immediately transfers to Harrier upon Ms. Marshall's death?

5 A. No. That -- no -- I had mentioned that --

6 Q. Okay.

7 A. -- there's too much -- there's too much to  
8 speculate about -- on how the estate tax would be  
9 satisfied, whether by payout or sale of assets to take  
10 forward for the full term and all those years I calculated  
11 the gross receipts -- not -- forget about the income tax,  
12 which I mentioned my concerns about, you know, reasonably  
13 quantifying that, I'm talking about the timing and the  
14 amount of the gross receipts into the Harrier Trust by the  
15 time Preston's youngest daughter turns 35.

16 Q. All right. I can hardly read this stuff, but can  
17 you --

18 A. It is small, I'll grant you.

19 Q. I got bad eyes for small stuff. Can you show me,  
20 in this report, where your calculation is for the  
21 co-trustees' fee for Harrier in, say 2017, 2018, 2019?

22 A. Yeah. I might have to get my wife's readers out,  
23 because I normally don't need glasses myself, but -- so  
24 Page 26, Schedule 1023. And I am going to have to -- she'd  
25 laugh at when I had to borrow these. And I'm sorry, you

1 said 2017?

2 Q. Yes, please.

3 A. You said 2017, '18 and '19. Those are the first  
4 three years. 225,000, 222,000, and 219,000 and change,  
5 respectively.

6 Q. All right. Where is that on Page 26?

7 A. If you look under the first -- right here  
8 (indicating.) And I gave you the discounted amount.  
9 There's not much of a discount in those early years; but  
10 it's 233,000 non-discounted; 245,000 and 257,000  
11 non-discounted.

12 MR. COX: I'm sorry. Can I -- can I -- may I  
13 approach, Your Honor? I can't see it.

14 THE COURT: Please.

15 A. Right there (indicating.) Right there.

16 Q. (BY MR. COX) 23,000?

17 A. 233,000.

18 Q. 233,000 is --

19 A. Yes.

20 Q. So it's 233,000 -- 248?

21 A. Yes. And 257 and change.

22 Q. Okay. And that's what the co-trustees fees would  
23 be for Harrier for the next three years; is that correct?

24 A. Yes.

25 Q. And what did you assume in making these

1 calculations was the annual distribution from the MIT to  
2 Mrs. Marshall?

3 A. I based it on a rolling six-year average to what  
4 had been made in -- on average, in the past six years.

5 Q. And what was that number, please, sir?

6 A. \$583,340.

7 Q. 583,000 --

8 A. Yes.

9 Q. That's how much Mrs. Marshall received on an  
10 annual basis from the MIT?

11 A. Oh. From the MI- -- that was the gross -- that  
12 was the total receipts from -- I misunderstood you. I  
13 thought you were talking about the Harrier Trust.

14 Q. No. I'm asking for Mrs. Marshall. How much -- do  
15 you have a number of how much Mrs. Marshall receives on an  
16 annual basis from the MIT?

17 A. Oh. I don't know off the top of my head.

18 Q. Is it in excess of \$100 million?

19 A. It's a large number. I just don't recall what it  
20 is.

21 Q. It's in excess of \$50 million?

22 A. Likely. I just -- I hate to speculate. I didn't  
23 --

24 Q. If Mr. Preston Marshall testified that it was in  
25 excess of \$100 million over five or six years ago, you

1 wouldn't have any reason to disagree with that, would you?

2 A. Probably not. It seems to me he has a pretty good  
3 recall on things like that.

4 Q. And just as a mathematical basis, we can agree  
5 that if Mr. Preston Marshall's testimony about \$100 million  
6 in annual distribution from the MIT goes to Ms. Marshall,  
7 that would be far in excess of the next three years of  
8 co-trustees' fees under the Harrier Trust, would it not?

9 A. By my standards, it would be far in excess, yes.

10 Q. And that would be true if we added the Harrier and  
11 the Falcon co-trustee fees together for the next three  
12 years, would it not, sir?

13 A. The numbers are substantially larger, yeah.

14 Q. And I guess one other thing: If Ms. Marshall has  
15 sole and exclusive control of the checkbooks of Harrier and  
16 Falcon and this Court has enjoined her, the co-trustees  
17 can't be paid anything, can they?

18 A. I don't know. I don't -- all I know is what I  
19 told you a minute ago. I guess, from my term, the fees  
20 were paid in an escrow account, so that's the extent of my  
21 knowledge.

22 Q. How about this: If the co-trustees don't have  
23 signatory authority on the Harrier or the Falcon checking  
24 accounts, they certainly can't write any checks or spend  
25 any money out of Harrier or Falcon, can they?



1       A.    I don't know.  I don't sign any checks at my  
2 house, but my wife writes checks for me when I tell her to,  
3 so I really don't know the answer to that question.  You  
4 don't have to sign a check to compel a check to be written  
5 is my point.

6       Q.    If you don't have any authority to control the  
7 account, you can't spend any money, can you, sir?

8       A.    That's a different question.  No, you can't.

9               MR. COX:  Pass the witness.

10              MR. WEBER:  I have no questions of this  
11 witness, Your Honor.

12              THE COURT:  Thank you, Mr. Weber.

13              MR. LAHAD:  First thing, Your Honor, in my  
14 attempt to be very efficient and get testimony in, I didn't  
15 show a slide for the compensation of the Falcon Trust, and  
16 I want to show that slide with the witness.

17                               **REDIRECT EXAMINATION**

18 BY MR. LAHAD:

19       A.    Mr. Hancock, what does this slide show us in terms  
20 of compensation for the Falcon co-trustees?

21              MR. COX:  Your Honor, I'd object.  I think  
22 he's limited to --

23              Never mind.  I'll withdraw it.

24       A.    2.7 million and change.

25       Q.    (BY MR. LAHAD)  And that's discounted, correct?

1       A.   Absolutely discounted, yes.  And discounted 3.7  
2 million under the scenario not fully distributed.

3       Q.   This is the \$3.7 million over what time period?

4       A.   Through -- just to be clear, through 2045, which  
5 is, once again, the age 35 for Preston's youngest.

6       Q.   And these are the discounted figures.  What is the  
7 relation between the discounted figures and the  
8 non-discounted figures?

9       A.   For the first number, the 2.7 million, the  
10 non-discounted figure is 7.2 million and change.  And for  
11 the 3.7 million, the non-discounted figure is 10,600,000  
12 and change.  So that -- when I talk about highly  
13 discounted, that's what I mean.  That's my financial  
14 haircut.

15       Q.   Do you know how this compensation -- the amount of  
16 this compensation's discounted and not discounted, how it  
17 relates to the amount of the trust assets in the Falcon  
18 Trust?

19       A.   It -- it's solely based upon gross receipts, so  
20 it's -- for the -- in my opinion, for the duration of my  
21 time period, part of the formula has been...

22       Q.   Now, the compensation scheme that's in the  
23 appointment document, that -- that scheme, those fees, are  
24 locked in at approval of the appointment as opposed to Mrs.  
25 Marshall's death, correct?

1       A.     Yes.

2       Q.     Mr. Hancock, would you consider December 12<sup>th</sup>,  
3     2017, to be imminent?

4       A.     Yes.

5               MR. LAHAD: One last housekeeping matter,  
6     Your Honor, I forgot to move to admit PX-72, the expert  
7     report. I'd like to do that at this time.

8               MR. COX: Objection; hearsay.

9               MR. LAHAD: Well, you know, candidly, your  
10    Honor, I'm admitting it for the Court's use to cross  
11    reference any of the calculations and to have a copy of Mr.  
12    Hancock's calculations. If the transcript and the  
13    testimony is sufficient, I'm fine with that. I'm doing it  
14    for the Court's convenience. There's no jury here. I  
15    think the calculations are arithmetic and trustworthy, but  
16    they are -- there's a lot of them. And -- so I'd like to  
17    give the Court the opportunity to have the hard copy if she  
18    so chooses.

19              MR. COX: Object. It's hearsay. Doesn't --  
20    doesn't matter whether there's a jury or not; it's still  
21    hearsay. And the hearsay rules apply whether it's a court  
22    or a jury as a finder of fact.

23              MR. LAHAD: Well, the Court has significant  
24    discretion over evidentiary matters. Again, this is for  
25    the Court's convenience. It's math, but there is a lot of

1 it.

2 THE COURT: Exhibit 72 is not admitted. I'm  
3 sustaining the objection.

4 MR. LAHAD: I pass the witness.

5 MR. COX: Oh, I'm sorry. Pass the witness.

6 THE COURT: Okay. Mr. Weber?

7 MR. WEBER: I'm sorry. No questions, Your  
8 Honor.

9 THE COURT: Okay. Thank you for your  
10 testimony, Mr. Hancock. You are excused at this time.

11 MR. HANCOCK: Thank you.

12 MR. LAHAD: Thank you, Your Honor.

13 MS. PACHECO: May we proceed, Your Honor?

14 THE COURT: Please.

15 MS. PACHECO: At this time, we call  
16 Mr. Mickey Davis.

17 *(Witness duly sworn.)*

18 MR. DAVIS: I do.

19 THE COURT: Thank you.

20 **MICKEY DAVIS,**  
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 BY MS. PACHECO:

24 Q. Mr. Davis, would you state your name or  
25 reintroduce yourself to Judge Butts?

1       A.    My name is Mickey R. Davis, and I'm an attorney  
2 here in Houston.

3       Q.    And can you just briefly describe your background  
4 in estate and trust area?

5       A.    I'm board certified in estate, planning and  
6 probate law by the Texas Court of Legal Specialization.  
7 I've been practicing in this area for 35 years -- served as  
8 an adjunct professor at the University of Houston Law  
9 Center for the last 30 years. I'm a Fellow and Regent of  
10 the American College of Trust and Estate Counsel. I'm also  
11 a licensed certified public accountant.

12       Q.    And have you served as a trustee?

13       A.    I have.

14       Q.    Are you familiar with the general obligations of  
15 the trustee?

16       A.    I am.

17       Q.    And in your practice, do you routinely prepare and  
18 advise -- prepare estate planning documents, such as wills,  
19 trusts, appointment documents, for trustees?

20       A.    Yes, I do. And I also routinely advise executors  
21 and trustees of fiduciary responsibilities.

22       Q.    And in doing so, do you use your experience,  
23 training, and education?

24       A.    Yes, I do.

25       Q.    And are you familiar with the matters in this

1 case?

2 A. Yes, I am.

3 Q. And have you been retained by Preston Marshall as  
4 an expert in this proceeding?

5 A. Yes, I have.

6 Q. And in the course of doing so, have you had the  
7 opportunity to review certain trust instruments known as  
8 the Harrier Trust and the Falcon Trust?

9 A. I have.

10 Q. And I put in front of you some relevant exhibits  
11 that have been already entered today. Do you see those,  
12 sir?

13 A. I do.

14 Q. And among those, are those the trust instruments  
15 of Harrier and Falcon?

16 A. They are, yes.

17 Q. And before today, have you reviewed those  
18 documents?

19 A. Yes. In considerable detail.

20 Q. And in doing so, have you had the opportunity to  
21 review the provisions relating to the appointment of  
22 trustees and the compensation of trustees?

23 A. I have.

24 MR. AKIN: Your Honor, we would object to Mr.  
25 Davis giving testimony as exclusively to Louisiana Trust,

1 the Harrier Trust, the Falcon Trust with Louisiana law; and  
2 we ask if I could briefly question the witness on that  
3 issue to establish foundation for that.

4 THE COURT: Please proceed.

5 **VOIR DIRE EXAMINATION**

6 BY MR. AKIN:

7 Q. Mr. Davis, you're not a licensed lawyer in the  
8 state of Louisiana are you, sir?

9 A. I'm not.

10 Q. And the Harrier Trust and the Falcon Trust -- both  
11 of those trust agreements say, under their items, that  
12 Louisiana law applies to them, right?

13 A. They do provide that the Louisiana Trust Code is  
14 applicable and that for purposes of the trustee bringing an  
15 action that's brought in Calcasieu County -- excuse me --  
16 Calcasieu Parish, Louisiana.

17 Q. And other than in this case, you've never  
18 testified as a witness on any issues where you give  
19 testimony as an expert on Louisiana law?

20 A. That's correct.

21 MR. AKIN: Based on that, Your Honor, they've  
22 now gone out and they've designated a Louisiana law  
23 witness, Carole Neff, who, apparently, they didn't like her  
24 testimony or they'd -- she'd be here, I guess, instead of  
25 Mr. Davis. But they want -- they've got somebody they can

1 bring on Louisiana law. It is Louisiana law. This is not  
2 on expert on that. It's different when he testified before  
3 about the grandchildren's trust which was Texas -- the  
4 estate. And -- so on that basis, the only things he could  
5 testify on in this case are Louisiana law; and we don't  
6 think he's the person who should offer those opinions.

7 MS. PACHECO: In response, Your Honor, this  
8 trust is not governed in its administration of Louisiana  
9 law. We have already established many times this is a  
10 trust that was signed in Texas by a settlor that was Texas  
11 with a Texas trustee, with a Texas beneficiary and has been  
12 administered in the state of Texas. While we don't dispute  
13 some provisions are going to be determined and construed  
14 under administrative law, under the restatement of  
15 conflicts of law. While those determinations may be  
16 Louisiana law, the administration of the trust exists in  
17 Texas. And Mr. Davis has previously testified. They've  
18 previously objected. That's been overruled. We're at the  
19 same place we've done before in this case. So in that  
20 regard, they've given you no authority for their  
21 statements. And, in fact, Ms. Neff is not here because  
22 this is not a Louisiana proceeding. That is a Texas  
23 proceeding as we've done in the past. He has the right and  
24 he has the expertise on mixed questions of fact and laws  
25 that relates to the administration of a trust in the state



1 of Texas to testify on those.

2 THE WITNESS: And if I may clarify my earlier  
3 testimony. While the Harrier Trust does provide that it's  
4 governed by the Louisiana Trust Code, the Falcon Trust does  
5 not. So I just want to make that clarification.

6 MR. AKIN: Object as nonresponsive. A couple  
7 of things: I mean, if I -- if I -- if today I wanted to --  
8 or anybody wanted to set up a trust and for whatever  
9 reason, guess what, I want to situs the trust in Alaska and  
10 I want to say that Alaska law applies, I could do that.  
11 I've got the right to do that, and that choice can be made.  
12 And it doesn't matter if it's -- you know, somebody can do  
13 that that has, you know, \$20,000 to their name. They don't  
14 need to have the resources to set up an office in Alaska.  
15 They can make that choice, and Pierce Marshall made that  
16 choice. And he made it. I think when you look at the  
17 documents as to both in there -- and to try to say that  
18 somehow the administration -- I mean, it's really the  
19 opposite. The law is that if I make that choice or Pierce  
20 Marshall, Sr., makes a choice to have the law of some other  
21 state apply that that's respected. And, really, I think  
22 the opposite should be the case of what they're saying. If  
23 they want to disprove that that you can ignore what the  
24 settlor says in the trust -- they're the ones who ought to  
25 be coming and saying: Hey, Judge, here's this case, saying

1 you can just ignore this twist-a-law provision (phonetic).

2 It's negated and nullified. They just don't have that.

3 And then the other thing I'd point out is  
4 that they tried to distinguish the administration of the  
5 trust. But if you look at Harrier, you know, it's -- the  
6 governing law section is -- it's all under a section  
7 entitled General Administration. And then it says  
8 governing law: The trust shall be governed under the  
9 Louisiana Trust Code -- Louisiana revised statute -- and  
10 they give that. Then it says: The trustee shall apply to  
11 the 14th Judicial District Court for Calcasieu Parish,  
12 Louisiana, for instructions regarding any questioning --  
13 questions that might arise regarding administration of the  
14 trust. It's in the very same section there. And we're  
15 here on the trustee fees which are in the same general  
16 administration section and this appointment of a successor  
17 trustee. Again, same section, same document that says all  
18 administrative issues are Louisiana law.

19 MS. PACHECO: Couple of points: One, the  
20 trust specifically says that headings, frankly, are  
21 relevant. Two, there's nothing in this -- either trusts  
22 that says there's situs in Louisiana. Counsel has  
23 consistently confused situs with specific -- looking at  
24 some construction issues. That is not the case in this  
25 case. If Mr. Marshall wanted situs in Louisiana, he could

1 have drafted a very different trust. Instead -- in fact,  
2 on the notarial acts in the last will, he specifically  
3 relates to Texas law and says: Will the designations be  
4 effective in Texas? Whether you construe that, as they  
5 like to do, just a notarial act from last known testimony  
6 or whether the whole appointment and qualification has to  
7 be under Texas law, clearly Mr. Marshall had an indication  
8 under Texas law.

9           Then they also ignored the restatement third  
10 of trust which both is the conflicts of law section and 76,  
11 which talks about the administration of the trust has a  
12 logical nexus to where it's being administered. While he  
13 says you've got -- pick Alaska Law -- he's given you no  
14 authority to do that. Because we know in Texas, for a  
15 trust administered in Texas, you can't severely limit  
16 certain obligations such as those listed in 111.0035. So I  
17 don't think you can create a trust that's administered in  
18 Texas and then go and point to a law and say: You can have  
19 complete exoneration of your fiduciary duties which is sort  
20 of what they're trying to do in this case. That's simply  
21 not the law under the Texas Trust Code.

22           So I'd like to proceed, given we do have  
23 limited time today. This is a, as they pointed out many  
24 times with -- what I considered to be some very irrelevant  
25 testimony. Your Honor can parse through the testimony if

1 she wishes to, but given our limited time, I'd like to  
2 proceed and obtain his opinions.

3 MR. AKIN: We would object. They haven't  
4 shown, under rule -- for expert opinions -- under Rule 702,  
5 that this witness is qualified by knowledge, skills,  
6 experience, training or education to testify as to these  
7 two trusts. And I think it's really undisputed that he's  
8 not as to Louisiana law issues. The only argument they've  
9 made is to try to really ignore that and say: Oh. Well,  
10 you know, you don't really have to apply Louisiana law.  
11 And I don't think they're right. I know we've briefed this  
12 before, but if -- the rule is generally that choice of law  
13 for -- are enforced. Now, could there be some special  
14 situation where some -- something is totally against public  
15 policy or you select some foreign jurisdiction in Texas  
16 that is going to say: Yeah. No, we're not going to really  
17 allow that. I mean, every now and then you see that. But  
18 there's been no showing or anything that -- that there's  
19 anything wrong with Louisiana law or that there's some  
20 policy choice in Louisiana that should be disregarded.

21 So, I mean, at a minimum, he shouldn't be  
22 allowed, I think, to testify on any issues related to  
23 Louisiana law. I don't think he should be allowed to  
24 testify at all on Texas law because that's really all he  
25 would be testifying on. But if he is allowed to testify,

1 it ought to go only to Texas law issues and not to  
2 Louisiana. And we -- you know, we can, I guess, talk about  
3 it later in closing or in briefing whether Texas law even  
4 matters on those issues.

5 THE COURT: Okay. Well, I'm going to allow  
6 the testimony at this time and overrule the objection.

7 MS. PACHECO: One point I didn't do before --  
8 may I approach the witness, Your Honor?

9 THE COURT: Please.

10 **DIRECT EXAMINATION (CONTINUED)**

11 BY MS. PACHECO:

12 Q. Mr. Davis, can you identify PX-104?

13 A. This is my -- this is my CV.

14 Q. Is that a true and correct copy of your CV?

15 A. Yes, it is.

16 MS. PACHECO: Your Honor, at this time, I  
17 offer 104.

18 MR. AKIN: Assuming it's just a CV, I don't  
19 have any objection.

20 THE COURT: Exhibit 104 is admitted.

21 MS. PACHECO: Thank you.

22 Q. (BY MS. PACHECO) Mr. Davis, getting back to  
23 Harrier and Falcon, you said you reviewed these provisions.

24 A. Yes, I have.

25 Q. And you're familiar with appointment provisions

1 and trusts and the appointment of trustees under such  
2 appointment provisions?

3 A. Yes.

4 Q. And in this case, have you reviewed Exhibits 12  
5 and 13 in front of you relating to the recent appointment  
6 of five purported trustees?

7 A. I have.

8 Q. And based on your review of the terms of Harrier  
9 and Falcon, are they, essentially, identical as it relates  
10 to the right of a trustee to appoint co-trustees or  
11 successor trustees?

12 A. Yes, they are.

13 Q. And have you reviewed this and considered Mrs.  
14 Marshall's testimony regarding the process she went through  
15 in appointing co-trustees?

16 A. Yes, I have.

17 Q. And do you have an opinion whether -- in her  
18 capacity as trustee -- has had the right to appoint  
19 co-trustees?

20 A. It's my opinion that she did have the right -- a  
21 right to appoint co-trustees in her capacity as the trustee  
22 of the Harrier and Falcon trusts.

23 Q. Was that right unlimited --

24 A. No.

25 Q. -- in your opinion?

1       A.    No.  It's not.  It's subject --all trustees'  
2   rights are subject to fiduciary duties so that -- the fact  
3   that the instrument might grant you the right to do  
4   something doesn't mean you can't do it, but you can do it  
5   without regard to your duties to the beneficiaries of the  
6   trust.

7       Q.    And you've heard some questions presented to  
8   Preston Marshall earlier today that she just had this right  
9   to designate it or delegate to, for example, Edwin Hunter.  
10  Did you hear those questions?

11      A.    I heard questions in that regard, yes.

12      Q.    Do you have an opinion whether it's appropriate  
13   for a trustee to delegate these type of decisions to an  
14   agent?

15      A.    Generally, these are not -- these are -- the  
16   appointment of successor trustees is an important  
17   substantive issue, one which involves the exercise of the  
18   trustees's discretion and should not be -- not delegated to  
19   an agent.

20      Q.    Based on your understanding of the process of Mrs.  
21   Marshall's appointment of these five purported trustees, do  
22   you believe she complied with the terms of the trust and  
23   the standard of the trustee in appointing?

24      A.    I do not believe that she's complied with the  
25   standards that are required of her as trustees of these

1 trusts.

2 Q. And why not?

3 A. Because she -- she purported to delegate  
4 responsibility to an agent who had direct conflict with the  
5 beneficiary. She didn't -- that the actions of the agent  
6 -- she didn't determine, independently, whether the  
7 recommendations that the agent made were appropriate. And  
8 if you just look at the appointments, the language itself,  
9 the appointment coupled with the -- the carrot, so to  
10 speak, to get the -- to get the agents to accept -- to get  
11 the trustees to accept their position -- it just goes  
12 beyond the terms of the trust agreement and the authority  
13 that she should exercise, isn't prudent fiduciary.

14 Q. Do you think it's even more concerning when the  
15 agent she selected is currently being sued by the  
16 beneficiary?

17 A. Yes. I think that's certainly a relevant factor.  
18 It goes to his -- his impartiality and his willingness to  
19 take the best interests of the beneficiary as his primary  
20 consideration in making a recommendation.

21 Q. And, likewise, you saw that Mrs. Marshall  
22 appointed five purported trustees?

23 A. Yes.

24 Q. In your experience, have you ever seen a document  
25 that appointed five additional purported trustees?



1 A. No, I never have.

2 Q. Do you believe that is appropriate with the  
3 standards of the trust and the standards of the trustee?

4 A. Well, Your Honor practiced law before she was a  
5 judge; and she, I'm sure, would agree with me that having  
6 five -- or six people run a trust is like five or six  
7 people diving a car. It's -- it's possible, but it's ugly.  
8 And having a giant committee to administer a trust is  
9 generally -- certainly nothing that I would ever recommend.

10 Q. Now, you've also heard testimony in counsel's  
11 opening that these trustees purportedly haven't done  
12 anything. Did you hear that argument, I would say?

13 A. Yes.

14 Q. And this idea that Mrs. Marshall hasn't shared  
15 books and records with them, hasn't added them to the bank  
16 account, hasn't given any ability to access anything, what  
17 is your understanding of whether that is within the bounds  
18 of the terms of the trust and the standards of the trustee?

19 A. Well, trustees generally act on majority vote.  
20 There's nothing to prevent the trustees if, in fact,  
21 there -- they have been validly appointed from going to  
22 Mrs. Marshall and compelling her to distribute the books  
23 and records for her to give them access to the assets, to  
24 give them signature authority, to permit them to sell  
25 assets of the trust. If, in fact, they're validly

1 appointed and some Court determines that, then -- then the  
2 fact that she has physical custody of the trust assets is  
3 not necessarily protective of the interests of the  
4 beneficiary.

5 Q. Do you believe there's imminent danger to this  
6 trust given that we have five trustees who claimed not to  
7 have jurisdiction here and purportedly don't have full  
8 information regarding the administration of the trust that  
9 can act on behalf of these?

10 A. My concern is we have, you know, trusts that are  
11 executed in Texas. The beneficiaries' in -- from Texas.  
12 The injury that might occur is to the beneficiaries here in  
13 Texas. And the co-trustees are pursuing litigation without  
14 really having been provided with any -- any materials with  
15 respect to the administration of the trust. They allege  
16 that they're not bound to appear in the Texas courts and  
17 that they're not governed by -- because the trust  
18 instrument precludes them from coming to Texas to get an  
19 action to determine how the trust is interpreted. They've  
20 somehow turned that into the fact that they're not  
21 obligated to comply with the orders of the Texas court or  
22 the Texas court does not have jurisdiction. I think  
23 that's -- that's very dangerous.

24 Q. Do you, likewise, think it's concerning that these  
25 trustees have never spoken to Preston Marshall?

1       A.    Yeah.  I think trustees have a duty to communicate  
2 with beneficiaries, and there's no indication that they've  
3 had any communication with Preston Marshall whatsoever.

4       Q.    In one of the transactions we've seen, they sought  
5 to approve as the Wyoming -- I don't know what you're going  
6 to call that thing in Wyoming -- that Wyoming attempt to  
7 evade Texas transaction?

8       A.    Right.  They've asked -- they've asked the  
9 Louisiana court to approve the -- the transaction involving  
10 the merger and severance of the trust in Wyoming.  And  
11 they've done that.  My understanding is that they're  
12 pursuing that claim subsequent to this Court's injunction.

13       Q.    And in that regard, you believe that would be a  
14 material transaction involving, particularly, Harrier where  
15 the Marital Income Trust is a trust that was going to flow  
16 into Harrier?

17       A.    They're asking the court in Louisiana to limit the  
18 assets that ultimately flow into the Harrier Trust to just  
19 the assets that have been purportedly partitioned off to  
20 this one trust in Wyoming.

21       Q.    Do you have an opinion whether a trustee would  
22 have some obligation to discuss that transaction with the  
23 principal beneficiaries and, at least, have an  
24 understanding of the transaction?

25               MR. AKIN:  Objection; leading.

1 THE COURT: Overruled.

2 A. The restatement of trust says if the trustee is  
3 going to change situs or do something that modifies the way  
4 a trust is administered, they have a duty to -- to inform  
5 the beneficiary of that and to consult with the beneficiary  
6 and that's -- clearly hasn't happened here, and I think  
7 that's violative of -- of Mrs. Marshall's duty as a  
8 trustee.

9 Q. (BY MS. PACHECO) Do you believe that also  
10 violates their duties as trustees?

11 A. And it violates -- it violates the duties of the  
12 other co-trustees as well if they're pursuing an action to  
13 confirm that without having properly admitted the fact that  
14 that's in the best interests of Preston and his children.

15 Q. I want to talk about the compensation provisions  
16 in the trust for a minute.

17 A. Yes.

18 Q. Did you review those also, sir?

19 A. I have.

20 Q. In both Harrier and Falcon?

21 A. I have, yes.

22 Q. And in terms of the compensation provision in the  
23 trust as they were drafted, who set those compensation  
24 provisions?

25 A. E. Pierce Marshall.

1 Q. Do you know of any basis to allow anybody under  
2 the terms of that trust to modify those trustee  
3 compensation provisions?

4 A. There's nothing in the trust instrument to permit  
5 that to be modified.

6 Q. And in the appointment documents you looked at a  
7 minute ago -- I believe it's Exhibits 12 and 13 -- do you  
8 have an opinion whether those compensation provisions were  
9 authorized under the terms of either Harrier or Falcon?

10 A. In my opinion, they were not authorized.

11 Q. And do you believe that they comport with the  
12 terms of Harrier and Falcon in any way?

13 A. It's my opinion that they do not.

14 Q. Do you have an opinion whether Mrs. Marshall, in  
15 her capacity as trustee, met her standards as a trustee and  
16 the standards of the trust when she signed Exhibits 12 and  
17 13?

18 A. I think the compensation provisions of Exhibits 12  
19 and 13 are egregious and show a demonstrative lack of  
20 concern for the beneficiaries of the trust and, in fact,  
21 just the opposite, showing animosity toward the beneficiary  
22 of the trust. The execution of those documents is in  
23 violation of her duty as trustee.

24 MR. AKIN: We object to that response in that  
25 it -- there's been no foundation that he has knowledge with

1 respect to the compensation issues, particularly, with  
2 these trust agreements and the locality specified.

3 THE COURT: Overruled.

4 MR. AKIN: And then also there's just  
5 speculation by what he supposedly thinks Mrs. Marshall's  
6 state of mind was, which is not an appropriate matter for  
7 expert testimony.

8 MS. PACHECO: Your Honor, I don't believe he  
9 addressed state of mind. He objected based on his  
10 understanding of the facts and circumstances and the terms  
11 of the trust and his experience and training as an estate  
12 and trust professional.

13 THE COURT: The objection is overruled.

14 Q. (BY MS. PACHECO) Now, with regard to the  
15 compensation provision in the appointment document, do you  
16 believe that that resulted in the appointment of five  
17 disinterested trustees?

18 A. No.

19 Q. Do you believe that the appointments of the five  
20 trustees are valid under these facts and circumstances?

21 A. I do not.

22 Q. Would you say -- when your review of the  
23 document -- I know that there was an objection to you  
24 earlier -- did you see, based on your review of the  
25 document, that there was anything that limited Mr.

1 Marshall's right to pursue relief in Texas relating to  
2 Harrier and Falcon?

3 A. No. The document provides that the trustees  
4 should go to the 14th Judicial District in Calcasieu  
5 Parish, but it doesn't limit Mr. Marshall or the other  
6 beneficiaries from pursuing action in Texas.

7 Q. And you're aware of the temporary injunction that  
8 was entered in the -401, the -402 and -403?

9 A. Yes, I am.

10 Q. And you're aware that that document suspended the  
11 appointment document?

12 A. Yes.

13 Q. And it is your opinion that that document did not  
14 validly appoint the five trustees, correct?

15 A. It's my opinion that the effect of the temporary  
16 injunction was to suspend the appointment of the  
17 co-trustees.

18 Q. In doing that, do you believe that these five  
19 individuals have any power to take any action on behalf of  
20 Harrier and Falcon?

21 A. None whatsoever.

22 MS. PACHECO: I pass the witness, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. AKIN:

25 Q. Mr. Davis, what materials were provided -- do you

1 know what materials were provided by Mrs. Marshall or her  
2 representatives to the co-trustees prior to the Court's  
3 temporary injunction order entered on July 12, 2017?

4 A. I only understand from your statements today that  
5 Mrs. Marshall has all the books and record in -- in --  
6 keeps custody of everything with respect to the trust.

7 Q. And did you understand that there was a temporary  
8 injunction entered on July 12, 2017?

9 A. Yes.

10 Q. And you can certainly understand after the Court  
11 suspended the powers of the co-trustees why Mrs. Marshall  
12 would not want to share information with them, allow them  
13 to have access to the books and records and the accounts  
14 and stuff like that, right?

15 A. Yes. I completely understand that.

16 Q. Okay. That's just complying with this Court's  
17 order, isn't it, sir?

18 A. Absolutely.

19 Q. Okay. And if she was sharing information with the  
20 co-trustees prior to the Court's order, you wouldn't  
21 criticize her for doing that, would you?

22 A. Well, in my view, these appointments were invalid  
23 so -- I wouldn't think that it would be appropriate. But  
24 if some Court determines that their appointment is valid  
25 and the fact that she shared information with them prior to



1 the entry of the temporary injunction, I wouldn't view that  
2 --

3 Q. You would agree that it would be appropriate to  
4 share information with validly-appointed co-trustees, fair?

5 A. Yes.

6 Q. And did you know, in fact, Mrs. Marshall was doing  
7 that?

8 A. I -- I understand that there was -- that the  
9 contact of the trustees was limited to meetings in Dallas  
10 subsequent to the time of their appointment.

11 Q. Did you know how many quarter -- quarterly  
12 distribution deadline -- votes there were before the  
13 Court's temporary injunction order?

14 A. I do not know.

15 Q. Do you know whether the first quarter of 2017 Mrs.  
16 Marshall and the co-trustees had a call to discuss the  
17 distribution before the Court's temporary injunction order?

18 A. It's my understanding that they did; but I don't  
19 know the details of the call obviously.

20 Q. Now, were you aware that Mrs. Marshall hasn't  
21 asked Preston's lawyers in Louisiana for permission to  
22 amend her lawsuit in the 14th Judicial District to drop  
23 those full faith and credit claims you referenced?

24 A. I understand that she's requested that they be  
25 dropped, but there's nothing that would prevent the

1 co-trustees from filing them in a different action or  
2 filing them subsequently. So, yes, she's trying to un-ring  
3 the bell, so to speak, but she -- I don't view that as a  
4 remedy for the imminent harm that the trust might suffer.

5 Q. You just testified, didn't you, that the  
6 co-trustees, with their powers suspended, they don't have  
7 any ability to act on behalf of the Harrier Trust, do they?

8 A. And, nevertheless, they're pursuing this  
9 litigation in Louisiana, so it appears that I've -- I view  
10 that they don't have any authority; but they, nevertheless,  
11 are continuing to take action in Louisiana. So,  
12 apparently, they feel that they do have authority.

13 Q. Well, let's talk about that because -- why do you  
14 have to be acting as a trustee to simply ask a court in  
15 Louisiana to determine whether you were validly appointed  
16 in the first place? You can be a purported trustee and  
17 seek that relief, can't you?

18 A. You could be a purported trustee and seek that  
19 relief, but that's not all we're doing.

20 Q. Okay. And the only thing you say they're doing is  
21 this full faith and credit claim, right?

22 A. That's certainly one of the other things that  
23 they're doing.

24 Q. Well, is there something else you could name?

25 A. Nothing that I'm aware of currently. But, again,

1 that doesn't prevent them from taking further action.

2 Q. Okay. So -- and let's just take -- not only the  
3 lawsuit -- how about anything since this Court's July 12th,  
4 2017, temporary injunction order, are you aware of one  
5 thing, outside of stuffing the lawsuit in the 14th Judicial  
6 District Court, that any of these co-trustees are doing?

7 A. I don't have any personal knowledge of that.

8 Q. Okay. You can't tell me one thing outside of  
9 stuffing the lawsuit, right?

10 A. That's the only thing that I've been made aware  
11 of, yes.

12 Q. Okay. And -- so we've got -- in the lawsuit,  
13 we've got the things you know about, at least, that the  
14 co-trustees are doing is they're seek -- they've got a  
15 claim seeking to ratify their appointments, right?

16 A. Correct.

17 Q. And that's something that can be brought by a  
18 purported trustee and not just a -- you don't have to be an  
19 actual trustee to ask a court to determine whether your  
20 appointment was valid, right?

21 A. Are you asking me that under Louisiana law or as a  
22 general proposition?

23 Q. Well, I think it would have to be as a general  
24 proposition, because you don't know much about -- really  
25 anything about Louisiana law, do you, sir?

1 A. Well, I'm just asking to clarify the question.

2 Q. Okay. As a general proposition.

3 A. As a general proposition, I think a person who  
4 believes -- sincerely believes himself to be a trustee  
5 could go to court and seek confirmation of their status as  
6 trustee.

7 Q. And were you aware that this claim by the  
8 co-trustees for -- relating to full faith and credit --  
9 when the Wyoming order was filed on January 11 of 2017?

10 A. I understand that they're seeking to continue to  
11 pursue that claim. I don't know the date that it was  
12 filed.

13 Q. Do you know one pleading, one motion after  
14 January 11<sup>th</sup>, 2017, that the co-trustees have filed,  
15 after that date, that attempts to pursue the full faith and  
16 credit claim with respect to the Wyoming order?

17 A. I know that they've communicated with court  
18 expedited hearings. I'm not familiar with the specific  
19 pleading involved.

20 Q. Okay. There's no motion that's pending --  
21 relating to the full faith and credit, is there, sir?

22 A. Not to my knowledge.

23 Q. Okay. So the answer is, at least to your  
24 knowledge as you sit here today, you're not aware of one  
25 thing that these co-trustees have done to -- since they

1 filed on January 11, 2017, that full faith and credit  
2 claim, to actually pursue or file another motion or take  
3 affirmative step to get relief on that?

4 A. Well, they've asked the Court to move forward on  
5 the pleadings that they have on file. And the pleadings  
6 that they have on file does include that claim.

7 Q. You're talking about the status conference?

8 A. I'm talking about -- I understand there's a  
9 hearing scheduled for early December.

10 Q. There's a hearing on December 12 that's scheduled  
11 on the co-trustees' motion for summary judgment relating to  
12 their appointment, right?

13 A. I'm not familiar with the details on -- of the  
14 hearing. I understand that there is a status conference  
15 scheduled for tomorrow, that there's a hearing scheduled  
16 for December 12<sup>th</sup>, and that the individuals that Mrs.  
17 Marshall purported to name as co-trustees are moving  
18 forward with respect to their claims in Louisiana.

19 Q. How many of them?

20 A. I understand only two have -- have joined the  
21 proceeding. But, again, that's -- that's just my  
22 understanding.

23 Q. Okay. Were you aware that motion that's set for  
24 hearing in December has nothing to do with the full faith  
25 and credit claim?

1 A. I haven't seen the motion.

2 Q. You don't know one way or the other, right?

3 A. I don't.

4 Q. Now, so -- and let's talk about this full faith  
5 and credit claim. It's actually a claim for the Harrier  
6 Trust, right?

7 A. That's a claim that the co-trustees were bringing  
8 on behalf of the Harrier Trust, yes.

9 Q. Okay. And they really don't have any ability --  
10 authority to bring a claim on behalf of the Harrier Trust  
11 once their powers are suspended, do they?

12 A. Correct. I don't believe that they do.

13 Q. Okay. And do you know whether anybody has brought  
14 to the attention yet of the judge in the 14th Judicial  
15 District to ask the judge to dismiss the co-trustees' claim  
16 on behalf of the Harrier Trust because their powers have  
17 been suspended?

18 A. I understand that there's been a request of  
19 Preston's counsel in Louisiana to modify the pleadings. I  
20 don't know what's been communicated to the Court.

21 Q. Okay. But we can agree, can't we, that if  
22 somebody did ask -- Preston's side asked the Court to  
23 dismiss the claims that the co-trustees are seeking to  
24 bring on behalf of the Harrier Trust because their powers  
25 have been suspended and the Court granted that motion,

1 that ends -- that would end the story, wouldn't it, subject  
2 to appellate rights or what have you?

3 A. Well, that -- yeah, assuming that that court has  
4 jurisdiction to do that and the Court actually did enter  
5 that order and not the contrary order, it might solve the  
6 problem, yes.

7 Q. Do you have any explanation for why they haven't  
8 pursued that kind of relief in the 14th Judicial District  
9 in Louisiana at any time since January 11, 2017?

10 A. No. I don't know.

11 Q. I mean, you've been involved in a few litigation  
12 matters yourself, right?

13 A. I have, yes.

14 Q. January 11, 2017, until -- here we are. It's  
15 early November, 2017. That would give you enough time to  
16 work up some kind of motion on that issue, wouldn't it?

17 A. I'm not privy to the -- to the strategy of  
18 Preston's counsel or the actions that they take so...

19 Q. Now, you testified a little earlier about how you  
20 didn't believe that the Harrier Trust agreement and the  
21 Falcon Trust agreement prohibit the beneficiary from  
22 bringing an action elsewhere, right?

23 A. Yes. That's my testimony.

24 Q. Okay. You do understand that, as to the  
25 co-trustees, the first lawsuit that involved the

1 co-trustees as parties was in the 14th Judicial District of  
2 Calcasieu Parish, right?

3 A. I'm sorry? I'm not completely familiar with the  
4 chronology of all the various litigation that's transpired  
5 with respect to the Falcon and Harrier Trust.

6 Q. So you gave -- so you offered your opinion that  
7 there was nothing in the Harrier Trust agreement and Falcon  
8 Trust agreement prohibiting a beneficiary from bringing the  
9 suit elsewhere without knowing whether -- where the first  
10 lawsuit was filed with respect to the co-trustees?

11 A. The question was: Does the beneficiary have the  
12 right to bring a lawsuit with respect to their interests in  
13 Texas or in some other state; and the answer is: Yes.  
14 They do.

15 Q. Okay. Well, what happens if the trustee is the  
16 first one to invoke the jurisdiction of a court, the 14th  
17 Judicial District of Calcasieu Parish? I mean, are you  
18 generally familiar with the concept that you don't get to  
19 go out and file lawsuit after lawsuit after lawsuit  
20 elsewhere, involving the same topic?

21 A. It's certainly not a matter that I consider myself  
22 an expert on.

23 Q. You ever heard of the first-to-file rule?

24 A. It sounds vaguely familiar. I'm certainly not in  
25 a position to testify about it.



1 Q. Okay. But you do understand that the way that  
2 Harrier Trust and the Falcon Trust agreement are worded --  
3 it uses the word "shall" when it talks about the location  
4 where the trustee can file, right?

5 A. If they're asking for instructions, yes.

6 Q. Okay.

7 A. But that's a very limited thing. Trustees are  
8 involved in a lot of litigation that have nothing to do  
9 with instructions.

10 Q. Okay. And -- so -- well, tell us. Educate us on:  
11 What is the nature of a petition for instructions under  
12 Louisiana law?

13 A. I'm sorry. I'm not able to opine about a petition  
14 for instructions under Louisiana law. I'm happy to tell  
15 you about petitions for instruction under Texas law.

16 Q. Okay. Well, but I want to talk about the -- the  
17 lawsuit filed by the co-trustees in Louisiana. And you  
18 don't have any information you can provide to this Court  
19 about what issues, under Louisiana law and procedure, are  
20 appropriately raised in petition for instructions, right?

21 A. Again, I can generally tell you a petitions for  
22 instruction is a court asking -- a trustee asking a court  
23 for instructions about how they undertake certain actions  
24 or interpret the trust or perform some function.

25 Q. And Louisiana's actually a Napoleonic Code, right?

1 A. Yes.

2 Q. It's a very different body of law than the  
3 common-law states. You know enough to know that, don't  
4 you, sir?

5 A. Well, the trust code in Louisiana is based upon  
6 the restatement second of trusts so that the trust law in  
7 Louisiana is -- is largely based on fiduciary principles.  
8 And the duties that are applicable to trustees are largely  
9 the same because they -- they pull from that same body of  
10 law. And your own expert has -- has indicated that.

11 Q. And there are differences in the code that  
12 Louisiana has adopted. It didn't just wholesale adopt  
13 anything, did it?

14 A. Yeah. There are differences, of course, yes.

15 Q. Can you tell us the top ten differences?

16 A. No.

17 Q. Can you tell us the top five differences?

18 A. No. I'm not in a position to walk through the  
19 Louisiana Trust Code and compare it to the restatement of  
20 second.

21 Q. How about one?

22 A. There are differences with respect to -- no --  
23 actually, that's the same -- a duty to disclose information  
24 to beneficiaries. I believe that's the same. I can't, off  
25 the top of my head. I know that there are some

1 differences.

2 Q. Now, do you agree with me that Texas law -- a  
3 resident is allowed to set up a trust that selects the law  
4 of another state?

5 A. Under some circumstances, yes. You have -- you  
6 can't just arbitrarily go out and pick a random set of  
7 laws. You -- the generally understood law is that there  
8 has to be some nexus between you and the situs that you're  
9 selecting. And -- so very commonly, as you said earlier  
10 if some Texan wants to have an Alaska trust, they would do  
11 that. But they would do that by appointing an Alaska  
12 trustee, situs and the assets in Alaska. Selection of law  
13 that has no nexus to anything that has to do with the  
14 trust, I don't believe that would be valid under Texas law,  
15 because, otherwise, it would allow grantor, settlor to get  
16 around the provisions of the Texas Trust Code that limit  
17 this sort of exonerations and limitations that you can  
18 provide for the trustees.

19 Q. Well, there could be -- there could be some sort  
20 of policy exception to a choice of law provision if --  
21 relating to exoneration of clauses. I'll give you that,  
22 right?

23 A. Yes.

24 Q. That doesn't mean you couldn't -- in situations  
25 where there's no public policy concern about the law in

1 another state, does it?

2 A. I don't -- I don't believe that that's true. I  
3 don't believe that you can simply randomly select North  
4 Dakota as your governing law and have a court in Texas  
5 respect that.

6 Q. Okay. You know, there are -- there are people  
7 who, in fact, set up -- there's a whole market out there  
8 for states that try to attract people to set up trusts,  
9 right?

10 A. There is, yes. And, invariably, they have to  
11 select a trustee that sitused in that state to give you  
12 that nexus.

13 Q. That's what they do for a lot of high net-worth  
14 individuals, that's for sure, right?

15 A. That's what they do in general, yes.

16 Q. Okay. But, you know, not everybody's in the  
17 category of being a high net-worth individual. You're not  
18 telling us, are you, that somebody whose resources aren't  
19 as great is somehow prohibited from selecting the law of  
20 another state, are you?

21 A. No. But I do think that you would go and pick a  
22 bank or a trust company or some other organization that's  
23 sitused in that state to serve as trustee or co-trustee if  
24 you want to have those situs rules apply.

25 Q. Okay. You mean, like having co-trustees located

1 in the state. That would be something, right?

2 A. Having a co-trustee located in the state -- a  
3 validly appointed co-trustee located in the state might  
4 somehow bootstrap you in to that nexus that would require  
5 to have the law -- the law of that situs apply.

6 Q. You have a legitimate reason to appoint  
7 co-trustees in a manner that would be consistent with the  
8 settlors' intent?

9 A. That may have been what Mr. Hunter was thinking in  
10 selecting these trustees is that he could drag this trust  
11 over to Louisiana when, in fact, prior to that time, there  
12 was no nexus.

13 Q. Well, you say there was no nexus. Pierce -- do  
14 you know what connections in 2006 -- May, 2006 -- Pierce  
15 Marshall, Sr., had with the state of Louisiana?

16 A. Well, he was residing in Dallas, I understand.  
17 Beneficiary's in Dallas. The trust was administered in  
18 Houston, so -- his lawyer was in Louisiana.

19 Q. That's a nexus, right?

20 A. I don't know if that's a legal nexus for -- for  
21 engrafting Louisiana law into these trusts that are really,  
22 essentially, Texas trusts.

23 Q. Where was his -- where was the county firm  
24 located?

25 A. Again, my understanding is it's in Louisiana; but

1 I don't believe that's a sufficient nexus.

2 Q. You don't think it's enough nexus for a settlor to  
3 desire to have a Louisiana trust, to say it's a Louisiana  
4 trust, pick Louisiana law, and be dealing with Louisiana  
5 lawyers and Louisiana accountants in connection with that  
6 trust?

7 A. I understand he might have intended to do that. I  
8 just don't think that he can legally do it without  
9 establishing a specific nexus between the trust itself and  
10 Louisiana, which did not happen in this case.

11 Q. Okay. So your client said he's here to -- or you  
12 were here in the courtroom -- he said to -- he's here to  
13 uphold the intent of Pierce Marshall, Sr., right?

14 A. Yes. With respect to the language in the will,  
15 exactly right.

16 Q. Oh. But not -- not with respect to the language  
17 of the trust where you're here to help him ignore the  
18 intent of Pierce Marshall, Sr. --

19 A. No. Not at all.

20 Q. -- with respect to Louisiana law.

21 A. Not at all. I think the fact that the trust  
22 instrument seeks to apply Louisiana law -- it was  
23 clearly -- clearly Mr. Marshall's intent. I just don't  
24 think that he was effective in doing that. And there were  
25 ways that he could have done it. I just don't think in

1 this particular case he went through the steps that -- I  
2 just think he got bad legal advice.

3 Q. Mr. Hunter committed malpractice. Is that what  
4 your opinion is?

5 A. No. I didn't say it was malpractice. I think  
6 that it could have been done differently, that it give --  
7 better given effect to Mr. Marshall's intent. In fact, his  
8 intent does indicate that, in some circumstances, Texas law  
9 applies. So, you know, you can't -- it's just difficult  
10 for me to just single out one paragraph -- and in the  
11 second to the last page of the trust and say -- you know --  
12 in one of the trusts -- and say: Well, we're -- somehow  
13 didn't -- you know, not fulfilling Mr. Marshall's intent.

14 Q. Isn't it true that the only reference to Texas law  
15 in either instrument is a reference to the mechanism by  
16 which the appointment may be made either by notarial act on  
17 the one hand or last will and testament in the state of  
18 Texas on the other?

19 A. It also recites that the grantors reside in Texas.  
20 It was excluded in Texas, and there are a lot of other  
21 references to Texas in the document.

22 Q. Okay. I was talking about Texas law.

23 A. It does talk about Texas law, specifically, with  
24 respect to that appointment of trustee provision.

25 Q. Well, there are two appointments of the co-trustee

1 provisions. There's one provision -- gives the power to  
2 appoint co-trustees, that is, does not refer to Texas law,  
3 right?

4 A. I'd have to go back and look at the specific  
5 language.

6 Q. Well, it would be 6.2 -- the administration  
7 provision -- that's 6.2. And if you look at 6.2G -- well  
8 --

9 A. Yeah. It talks about appointing trustees and then  
10 the method of doing that and then applies Texas law, yes.

11 Q. Well, there's nothing in the first sentence of  
12 Section 6.2G. It says: The trustee shall be empowered to  
13 select and designate one or more disinterested individuals  
14 to serve as co-trustee and may designate a successor  
15 trustee should she cease or otherwise fail to serve as  
16 trustee for any reason whatsoever, right?

17 A. Yes.

18 Q. And there's nothing in that sentence that refers  
19 to Texas law. We can agree on that, right?

20 A. Correct.

21 Q. The only time that there's a reference to Texas  
22 law is in connection with the selection of -- or  
23 designation of any successor trustee made under a last will  
24 and testament valid under the laws of the State of Texas,  
25 right?



1 A. Notarial act, the last will and testament, yes.

2 But it does say: Selection of successor trustee shall be  
3 made under -- into that process valid under Texas law, yes.

4 Q. And you can interpret that as applying only to the  
5 last will and testament. That's one way to interpret that,  
6 right?

7 A. I interpret it as applying to the entire sentence,  
8 but...

9 Q. Okay.

10 A. There's no --

11 Q. And 6.2, Section 6.2G, G is under the very same  
12 section that has a governing law section that references  
13 Louisiana Trust Code, right?

14 A. If they happened to appear in the same article of  
15 the trust agreement.

16 Q. The same article that's -- relates to general  
17 administration of the trust, right?

18 A. That was Mr. Hunter's label for that section; but,  
19 again, trust document says that the headings are not to be  
20 construed as part of the -- as part of the language of the  
21 trust.

22 Q. And you don't know, under Louisiana law, whether  
23 those matters are or are not considered administrative  
24 matters, do you?

25 A. I think selection of a successor trustee is not an

1 administrative matter.

2 Q. You think that; and you can't direct us to any  
3 Louisiana law one way or the other on that issue, can you,  
4 sir?

5 A. Correct.

6 Q. I'd like to talk to you a little bit about the  
7 payment of estate taxes that -- after Mrs. Marshall's  
8 passing.

9 A. Yes.

10 Q. You -- that's an issue you testified on before  
11 Judge Butts before -- when we had the first -- earlier  
12 temporary injunction hearing, right?

13 A. I did.

14 Q. And, in fact, you were asked by Ms. Pacheco  
15 whether Section 6161 of the IRS Code applied here; and  
16 that's a provision that potentially allows one-year  
17 deferrals on the payments of taxes, up to ten years, right?

18 A. Correct.

19 Q. And you testified -- at that time, you told the  
20 Court that that provision was absolutely available, didn't  
21 you, sir?

22 A. Sure. The estate is perfectly entitled to ask the  
23 IRS for an extension of time under the provisions of  
24 Section 6166. There's no limitation under 6161 -- excuse  
25 me -- that says only these estates or only these estates

1 comprised of these assets can request for these extensions.  
2 That section is available to every estate, including Mrs.  
3 Marshall's estate.

4 Q. The implication of what you told the Court at the  
5 time was that that provision absolutely applied. It was --  
6 that's such that you could invoke that ten years, right?

7 A. That's certainly not what my testimony was  
8 intended to convey. My testimony was that it is available.  
9 It clearly is. There's no -- we talked in context. We  
10 talked about 6166, which does have some specific  
11 limitations. Under that provision, only certain estates  
12 can even seek that sort of extension. And then we moved on  
13 to 6161, and I said: Yeah. Mrs. Marshall's estate could  
14 certainly apply for an extension under those provisions.  
15 There's nothing that would prevent her from doing that --  
16 her estate from doing that.

17 Q. You told the Court: Absolutely. I have used it  
18 successfully in circumstances virtually identical to this.  
19 That's what you told the Court.

20 A. And I have. That's true.

21 Q. Okay. You were implying to the Court when you  
22 were criticizing Mr. Hunter and his credibility that Mr.  
23 Hunter was wrong and that this deferral -- it was there.  
24 You've done it before. You could do it here. Take my word  
25 for it, right?

1       A.    I certainly didn't mean to leave that impression.  
2   That's not what my testimony was.  I said that it was  
3   available, and it is available.

4       Q.    It's available; it just may or may not apply,  
5   right?

6       A.    It may -- it's within the discretion of the IRS to  
7   grant those.  My experience is -- that it's easy to get it  
8   for the first year; and, in particular, in a state of --  
9   it's pretty easy to get it the second year.  It's more  
10   difficult to get in each succeeding year.  But it's not  
11   unavailable.  It's just -- it's -- it's available.  It's  
12   absolutely available to this estate.

13       Q.    Now, if it does apply in this case and there could  
14   be a deferral -- you think it's a good idea, don't you?  
15   Your testimony was it would be a good idea to defer the  
16   payment of taxes up to ten years.

17       A.    That's a very difficult call to make.  And you'd  
18   have to wait and see.  The Republican bill that was  
19   introduced this morning in Congress repeals the estate tax  
20   for decedents dying after 2023.  So it's just -- it's so  
21   difficult to tell based upon the facts and circumstances.  
22   One of the things that an executor has to do is determine:  
23   Should we pay the tax now?  Should we defer?  What are we  
24   going to do with the money in the meantime?  How likely is  
25   it for us to be able to get the deferral?  Who are the

1 buyers for these assets? Is it a distressed sale? There  
2 are a myriad of factors that go into -- into -- that are  
3 taken into account in making that decision. So I can't  
4 say, sitting here today, that the estate should apply for a  
5 deferral, for a ten-year deferral, on these taxes.

6 Q. Okay.

7 A. It's certainly something that the executor ought  
8 to consider, and I think it's certainly -- we're not --  
9 certainly not precluded from requesting a deferral under  
10 those provisions.

11 Q. And do you remember what your testimony was to the  
12 Court on the same issue on March 23, 2017?

13 A. I don't, specifically, recall. I remember that we  
14 talked about the same issue. If I've said something to  
15 mislead the Court, I'm -- that certainly was not my  
16 intention. My -- my intention was only to tell the Court  
17 that one of the things that an executor in an estate like  
18 this ought to consider and very likely ought to pursue. I  
19 mean, if the estate tax rules are -- stay the same and the  
20 facts and circumstances of Mrs. Marshall's stay the same, I  
21 would suggest that they ought to pursue that extension and  
22 that it's absolutely available to them -- the avenue to  
23 pursue the extension.

24 Q. If I'm understanding you right, you really didn't  
25 have enough information then and you really don't have

1 enough information now to know whether it would be in the  
2 best interests of the estate down the road to seek a  
3 ten-year extension.

4 A. No one knows.

5 Q. No one knows. Okay.

6 A. But it is -- it's something -- it's an option  
7 that's available to the executor.

8 Q. Okay. And we can take your testimony today and we  
9 can go back and compare it to what you said before and we  
10 can see -- evaluate whether you said the same thing?

11 A. Sure, we could.

12 Q. Okay. But you'd agree -- you know, the honest  
13 truth is -- there's no way you really could have had then  
14 or now an informed opinion on whether it would make sense  
15 to seek up to ten-year deferral of the payment of estate  
16 taxes, right?

17 A. Again, my testimony is that if things then are the  
18 same as they are now, it would make absolute sense to do  
19 that. But we don't know what the tax laws are going to be.  
20 We don't know what the tax rates are going to be. We don't  
21 know if Ms. Marshall's going to sell the Koch stock  
22 sometime during her lifetime. I'm just -- so I can't say  
23 absolutely, in every instance, you should seek this  
24 deferral.

25 Q. Now, we can agree that if a -- one day, whenever

1 that is, after Mrs. Marshall passes -- if there is a  
2 deferral that's successfully obtained for, let's say, the  
3 maximum of ten years, that would have an impact on when the  
4 corpus of the Marital Income Trust, Trof nonvoting shares,  
5 would be distributed to Harrier, fair?

6 A. Not necessarily.

7 Q. Well, we do agree that there's a tax lien that  
8 would apply to -- that would include the corpus of the  
9 Marital Income Trust upon Ms. Marshall's death, right?

10 A. Yes. They're not precluded from transferring the  
11 shares, but they are subject to automatic ten-year tax --  
12 on the stock.

13 Q. Okay. And it would make sense to you, wouldn't  
14 it, that those -- given what you do know about Mrs.  
15 Marshall's estate that those shares -- you've heard  
16 testimony today that comprises a very large percentage of  
17 the value of what her estate is expected to be?

18 A. Yes.

19 Q. Wouldn't you expect the estate tax issue to be  
20 resolved first before there's a big distribution to the  
21 Harrier Trust?

22 A. Yes.

23 Q. That would be the prudent thing to do, right?

24 A. That's certainly what happens in most cases, but  
25 not all.

1 Q. Okay. And if there is a deferral of the payment  
2 of taxes and a deferral of any distribution until after  
3 taxes are paid, that's something that would have an impact  
4 on the timing of an amount of these co-trustees' fees,  
5 right?

6 A. Yes, it would.

7 Q. Okay. And you understand, I mean, were you still  
8 in the courtroom when you saw the big numbers up there?

9 A. Yes, I was. And I believe Mr. Hancock's testimony  
10 was that: Gosh. When you get out there that far and you  
11 talk about whether there's going to be an estate tax and  
12 whether these assets are going to be sold and by whom, that  
13 the math gets really murky. And -- so you have to -- you  
14 can't just precisely put a number on that until you work  
15 that into your discounts and how you present value to those  
16 and how you effect a probability of this contingent event  
17 and that one of the things he considered was whether these  
18 assets would be sold. I don't think that that's -- there's  
19 no element -- my understanding from his testimony is  
20 there's no element in his calculation where he said here's  
21 the sales proceeds from the stock. I'm taking a  
22 five-percent fee on that. It's just one of the things that  
23 you work in the mix in determining the contingency amount  
24 of the discount that you apply for the contingency.

25 Q. The fees -- the co-trustees' fee calculations,



1 they get a lot bigger after there's an assumption that the  
2 corpus of the Marital Income Trust, 50 percent of it, has  
3 been distributed to the Harrier Trust, right?

4 A. They do under the formula, yes.

5 Q. They do. Okay. And -- so that's a big driver --  
6 whether there's a ten-year deferral in that happening or  
7 not can make a pretty -- makes a big difference,  
8 particularly, when you consider the time, value, and money,  
9 right?

10 A. I not sure. Because -- because the trust  
11 instrument -- the formula talks about the present value of  
12 some future death of Mrs. Marshall. And then once she  
13 passes away -- I think you take a look at the present value  
14 of the actual assets of the -- of the -- of this particular  
15 Wyoming Trust. Well, one of the assets of the trust would  
16 be the shares encumbered by the estate tax. So I'm not  
17 sure exactly how that would work in terms of -- I haven't  
18 sat and thought through how that process would impact this.  
19 But I'm not sure that -- certainly the timing of her death  
20 would have a huge difference. But the timing of the  
21 payment of the estate tax, I'm not sure that that would  
22 have a difference.

23 Q. You don't know one way or the other?

24 A. My gut tells me that I wouldn't. But, again, I  
25 haven't sat and analyzed this formula with those specific

1 issues in mind. Mr. Hancock, obviously, did take those  
2 considerations into -- his testimony was that he took those  
3 factors into consideration when he applied his discount in  
4 terms of the contingent nature of the estate tax  
5 obligation.

6 Q. Okay. But what he didn't take into account was  
7 any payment -- assumption for payment of estate taxes. You  
8 heard that, right?

9 A. Well, I think he said he didn't assume that the  
10 estates taxes were paid. He took the fact that they might  
11 be paid into consideration in developing his discounts.

12 Q. Okay. You have no idea. You haven't done any  
13 analysis of the appropriateness of the discount rate he  
14 used, have you, sir?

15 A. I have not.

16 Q. Okay. Now --

17 MR. AKIN: Am I in trouble? I was just  
18 looking up at the clock here. Should we break here, or do  
19 we want to try --

20 MS. PACHECO: Your Honor, if there's any way  
21 we could finish Mr. Davis today. He's got an appointment  
22 in the morning. And if he --

23 THE WITNESS: I'm sorry, Your Honor.

24 MS. PACHECO: -- can be given a little  
25 latitude --

1 THE WITNESS: If we can finish, I'd be --

2 MR. AKIN: There's no need to ask me. I'll  
3 stay.

4 THE COURT: I don't have a problem staying,  
5 but the court reporter does need a short break, though.

6 MR. AKIN: Yeah.

7 *(Break taken from 5:11 p.m. to 5:22 p.m.)*

8 THE COURT: Okay. So it's 5:22. And I'm  
9 hoping it will be over in about 15 minutes. Can you do  
10 that?

11 MR. AKIN: I'm hoping shorter.

12 THE COURT: Okay. Sounds great.

13 Q. (BY MR. AKIN) Mr. Davis, in your report, you  
14 referenced the fact that you had a conversation with one of  
15 Preston's other experts, Carole Neff, right?

16 A. I did.

17 Q. You had a telephone conversation with her before  
18 you did your report?

19 A. Two -- two conversations, I believe.

20 Q. And you found her to be knowledgeable, I take it?

21 A. She seems to be a knowledgeable practitioner in  
22 Louisiana, yes.

23 Q. And you relied on information she provided you in  
24 forming your opinions?

25 A. In some small respect, I think she -- I think I

1 looked at some Louisiana statutory provisions of Louisiana  
2 Trust Code and asked her to confirm that my interpretation  
3 of those provisions were accurate or made sure that I  
4 wasn't misstating Louisiana law.

5 Q. Have you had an opportunity to review Mrs. Neff's  
6 deposition?

7 A. I have not.

8 Q. Okay. Do you have any criticisms of any of the  
9 opinions Mrs. Neff has given so far in this case, whether  
10 in a written report or otherwise?

11 A. Well, I think that -- that in the course of some  
12 of the testimony that she's given -- and I haven't read the  
13 deposition, but I've seen discussions of it -- she was  
14 asked some very specific questions: Is -- is this action  
15 alone a breach of fiduciary duty?

16 And she said: No.

17 And then at a later point in time said:  
18 Well, what about this isolated action. Is that a breach of  
19 fiduciary duty?

20 And she said: No.

21 And -- so I think that when you, then,  
22 selectively excerpt those provisions, you -- you get the  
23 sense that nothing that is done -- because you've only  
24 asked about these very specific things -- are a breach.  
25 And to the extent that her testimony would lead the Court

1 to believe that there's no breach because you've asked her  
2 about these little isolated elements, then I think that  
3 that's -- that's not helpful for the Court in determining  
4 the issues at stake in this lawsuit.

5 Q. Cross-examination of the opposing expert and the  
6 specific admissions you get from an expert, that's not  
7 helpful to the Court?

8 A. Well, I -- again, I think that in the context in  
9 which those excerpts of her testimony have been used, I  
10 don't think that that's helpful to the Court.

11 Q. Okay. And -- so to the extent --

12 A. And of the course the judge will make that  
13 determination and not me, but you've asked my opinion.

14 Q. Okay. Well, so -- another expert you talked to  
15 there is this Don Robinson, right?

16 A. Yes.

17 Q. Here's their fee expert?

18 A. Yes.

19 Q. All right. And -- so, really, what you're saying  
20 is, to the extent that Carole Neff, their Louisiana law  
21 expert, or Mr. Robinson, their fee expert, to the extent  
22 that either one of them says something inconsistent with  
23 you, the Court should disbelieve those two experts and  
24 believe you, right?

25 A. That's not my testimony at all.

1 Q. Okay. You'd agree, wouldn't you, that Mrs. Neff  
2 is a more authoritative and better source of Louisiana law  
3 than you, right?

4 A. I would agree with that, yes.

5 Q. Do you have any specific -- you don't have any  
6 specific testimony of Mrs. Neff that you can identify for  
7 us today that you think she got wrong, fair?

8 A. Again, I think that -- the answers to the specific  
9 questions that you've asked -- I don't know that her  
10 answers are necessarily wrong, but it's the context in  
11 which those answers have been presented that I think is  
12 misrepresentative.

13 Q. Different question: Can you identify one single  
14 answer that Ms. Neff gave where you've read it, you've  
15 looked at it, and you said: Ms. Neff, she's got that  
16 wrong?

17 A. I haven't read her deposition.

18 MR. AKIN: No further questions at the time.

19 MR. WEBER: Your Honor, I have no questions,  
20 but I do have an issue that I'd like to discuss with the  
21 Court before we break for the day. I just wanted to give  
22 you the heads-up on that.

23 THE COURT: Thank you, Mr. Weber.

24 **REDIRECT EXAMINATION**

25 BY MS. PACHECO:

1       Q.    Just a few questions, Mr. Davis.  You said the  
2 context involving Ms. Neff -- since counsel seems to want  
3 to elicit your opinions on another expert, what do you mean  
4 by the context as it relates to Carole Neff?

5       A.    Well -- so when you're evaluating a trustee's  
6 actions, you're looking at sort of an overall course of  
7 conduct.  You're looking at sort of the where we started  
8 and where we ended.  And there are circumstances where you  
9 can dissect those actions into little bits and pieces and  
10 say:  Was this the smoking gun?  And you say:  No.  There  
11 was nothing wrong with that by itself.  Well, how about  
12 this over here?  Was that the thing that was really the  
13 breach?  And they say:  No.

14               And you, then, piece those together.  You  
15 never ask the question:  Well, overall, was the conduct  
16 improper?  You say:  Was this element improper?  Was this  
17 element improper?  Was this element improper?  And then you  
18 take that testimony and you say:  Well, their expert says  
19 nothing -- nothing went wrong here.  But I just think that  
20 that mischaracterizes the real inquiry of the Court which  
21 is the overall effect of the appointments and the -- you  
22 know, naming these five individuals and -- and putting this  
23 compensation formula in place -- is that appropriate?  It's  
24 my -- it's my opinion that that is a breach of her duty.

25       Q.    And counsel asked you some questions about

1 calculations of future interests in the Marital Income  
2 Trust. Do you remember those conversations?

3 A. Yes.

4 Q. And, of course, they also asked you about Mr.  
5 Hancock's calculations.

6 A. Yes.

7 Q. In terms of -- well, one, the compensation formula  
8 in Harrier and Falcon talks about compensation in the  
9 locality where the duties are being discharged, correct?

10 A. That's exactly right. That's the language in the  
11 original trust agreements. It talks about the locality in  
12 which the trust services are being provided.

13 Q. Okay. And we've talked about it. In fact, the  
14 first page of each of these trusts says it's being signed  
15 in Dallas County, Texas, correct?

16 A. Capital letter at the top. United States of  
17 America, State of Texas, County of Dallas.

18 Q. And, in fact, it's been undisputed that this trust  
19 has been administered in the state of Texas even through  
20 the current, correct?

21 A. When the trustees came to -- to meet with  
22 Mrs. Marshall, they came to Dallas. It's -- it's my  
23 understanding from the -- the record in court today that  
24 all the books and records are in Mrs. Marshall's possession  
25 in Dallas, Texas.



1 Q. Okay. And you've been advising trustees for how  
2 long?

3 A. 35 years.

4 Q. In 35 years, have you ever seen a trustee, as part  
5 of their compensation, include an interest of an expectancy  
6 in another trust that is not terminated yet?

7 A. Never.

8 Q. And have you ever seen a compensation model that  
9 is tied to 40 percent of gross receipts?

10 A. Never. It's -- it's just remarkable that anyone  
11 would ever think that that was appropriate.

12 Q. And you're a CPA, too?

13 A. I am.

14 Q. So gross receipts means what?

15 A. It means money or assets flowing into the trust.

16 Q. Does it also mean sales of trust assets?

17 A. Yeah. So if you have an asset and you sell it,  
18 the cash that comes in is a gross receipt. It's everything  
19 that clicks onto the trust's books during the  
20 administration -- everything that's received. It can't be  
21 plainer than that.

22 Q. So we've already talked about -- in this case, we  
23 have six alleged trustees right now, correct?

24 A. Correct.

25 Q. And the majority rule allows them to sell rust

1 assets even if Mrs. Marshall disagrees, correct?

2 A. Yes. And -- so this notion that she was going to  
3 indemnify or be jointly and severally liable would assume  
4 that she's participating in those actions. My expectation  
5 is that Mrs. Marshall would never participate in those  
6 actions. She's enjoined from doing that. But that doesn't  
7 mean that the other five might go do this without her  
8 participation -- cause grave harm to the trust and then the  
9 effect of a judgment from the damages that are incurred as  
10 a result of their activities.

11 Q. So if they sold all the trust assets this year,  
12 even without her consent, 26 million in one, 18 million in  
13 another, they get 40 percent of that, arguably, as a  
14 ceiling, correct?

15 A. Yeah. So it's millions of dollars in trustee  
16 fees.

17 Q. For punitive for selling trustee assets.

18 A. Correct.

19 Q. And, in fact, if they really wanted to get  
20 Preston, which seems to be this whole plan so far, can't  
21 they distribute all the assets of the Marital Income Trust  
22 and then have him sell the assets and pay the estate tax  
23 bill?

24 MR. AKIN: Objection; argumentative and also  
25 completely speculative of the whole line of questioning.

1 THE COURT: Overruled.

2 A. The -- the trustee of the Marital Income Trust  
3 could distribute the assets to the -- the Harrier trustees  
4 and say: You guys sell the assets. Now, we've got  
5 40-percent estate tax under current law. We've got a  
6 40-percent trustee fee, potentially an income tax,  
7 depending upon the difference in value between the date of  
8 death and the date of sale. So it's conceivable that the  
9 trustees, if they weren't acting in Preston's best  
10 interest, could do that, yes.

11 Q. (BY MS. PACHECO) Have you seen any actions that  
12 have been taken by these purported co-trustees or Mrs.  
13 Marshall in the last year or two, relating to Harrier and  
14 Falcon that you believe, in your opinion, is in Preston's  
15 best interests?

16 A. I'm not privy to all the actions that they've  
17 taken. I know that they've determined not to make any  
18 distributions of income to him despite a long history of  
19 doing so in the past. They have litigation pending in  
20 multiple forums. She's adopted this compensation provision  
21 which provides really punitive compensation for trustees.  
22 It doesn't appear that she's acting in Preston's best  
23 interests.

24 MS. PACHECO: I pass the witness.  
25

**RECROSS-EXAMINATION**

BY MR. AKIN:

Q. Mr. Davis, when you talk about the possibility of a sale of Ribosome units owned by the Harrier Trust or the Falcon Trust, who are even the potential buyers of that under the restrictions that are out there? Do you know?

A. My understanding is that the Marshall family -- and, potentially, they could cause the Ribosome entity to sell to the Koch brothers the Koch shares. So it's a limited market, but it's not a zero market.

Q. It's a very limited market, right?

A. Again, although the market is small, the players, I think, would be very interested in making those purchases.

Q. The players would be people -- you're talking -- not talking about people on the street. You're not going to walk into your local 7-11 and find someone to buy all the Ribosome units of Harrier, right?

A. No.

Q. You're talking about people who you'd expect to do some due diligence, perhaps, before they invested tens of millions of dollars in an illiquid asset?

A. I -- I think the people that would be potential buyers have a lot of information about these entities and these underlying assets, so, certainly, they'd want to do

1 due diligence; but they're going to do it pretty readily.  
2 They've got a lot of information that the guy in 7-11 does  
3 not have.

4 Q. Yeah. They'd want to look at what stuff -- like a  
5 lawsuit -- whether somebody's been enjoined and their  
6 powers have been suspended, right?

7 A. They would certainly want to take that in  
8 consideration. But if the Court in Louisiana enters a  
9 ruling that says their appointment is valid and then they  
10 come in and purchase based upon that ruling in Louisiana,  
11 then they're -- I think, they're bona fide purchasers. And  
12 how are we going to go back to them and say: Oh. Yeah.  
13 But -- but the court in Louisiana was wrong? You're just  
14 in another lawsuit.

15 Q. Okay. So now we've got another assumption.  
16 You're saying that in order for this harm to happen, they  
17 not only have to go -- the co-trustees would not only have  
18 to go forward with litigation in the 14th Judicial  
19 District, but then the judge in the 14th Judicial District  
20 would have to rule that they're validly appointed.

21 A. And I understand that there's a hearing set on  
22 that issue in early December.

23 Q. December 12 is the date you heard, right?

24 A. Uh-huh.

25 Q. Okay. And -- so -- and you don't have any idea

1 what that judge thinks or doesn't think of that issue,  
2 right?

3 A. I don't, no.

4 Q. Okay. But let's think about this. I mean, even  
5 if you're a sophisticated buyer and you're going to do your  
6 homework, even under your hypothetical, that somehow  
7 there'd be another judgment out there, you really think  
8 that somebody's going to look at one court -- a dueling  
9 battle of courts where one court says: No. These  
10 trustees, they're suspended. They have no powers. And  
11 another saying: They're validly appointed. You think  
12 somebody's going to plunk down tens of millions of dollars  
13 without knowing who's going to win the battle as to which  
14 court might be right?

15 A. If the shares are priced right, they, very well  
16 may. Obviously, that's something that they were going to  
17 take into consideration in valuing the shares; but there's  
18 nothing to stop them from doing that.

19 Q. So how do you expect this hypothetical sale of  
20 yours you're talking about here -- someone would want that  
21 certificate, wouldn't they, the actual certificate for  
22 those units?

23 A. Ultimately, the trustees could sign a stock power  
24 or they could sign an agreement delivery -- the  
25 certificates and a ministerial act that the trustees have

1 the purported authority to convey. They don't need the  
2 certificate in their -- in their physical possession to do  
3 it.

4 Q. Don't you think they'd want to talk to Mrs.  
5 Marshall?

6 A. They might. And Ms. Marshall might say: I vote  
7 no. And -- but she doesn't have the only voice in this  
8 matter.

9 Q. Not -- not -- not just the co-trustees, but this  
10 alleged hypothetical purchasers. Don't you think they'd  
11 want to talk to Mrs. Marshall?

12 A. I think that would be prudent, yeah.

13 Q. Okay. And -- so -- and she's the one who's got  
14 the certificate, right?

15 A. She is. But if the other trustees are empowered  
16 to act on behalf of the trust, they can sue her to enforce  
17 the contract that they've entered into and compel her to  
18 deliver the certificate. She'd be breaching the agreement  
19 on behalf of the trust.

20 Q. Oh. I see. So now we could have the 14<sup>th</sup>  
21 Judicial District -- they could go ahead and they could  
22 affirm the appointments of these co-trustees and then the  
23 co-trustees -- they could go file another lawsuit that  
24 could force Mrs. Marshall and -- you think to violate this  
25 Court's order? Is that the -- that's where we're at now,

1 the level of speculation?

2 A. I'm just saying that they're -- you're asking me  
3 if this specific action -- the fact that the certificates  
4 are in Mrs. Marshall's possession prevents them from  
5 selling the stock. And I'm telling you it doesn't.

6 Q. Okay. I mean, I guess if you can find somebody  
7 dumb enough, you could sell anything, right?

8 A. I guess that's true, yes.

9 Q. Okay. So maybe there's -- maybe there's some  
10 really unsophisticated buyer willing to plunk down --

11 A. Or maybe a very sophisticated buyer who just  
12 thinks it's a very attractive price.

13 Q. Okay. And, you know, Court orders -- ignored.

14 A. Well, again, you know, if the judge in Louisiana  
15 says that these other trustees have the authority to act --  
16 if he says Ms. Marshall's enjoined but the other trustees  
17 are not -- and I'm not sure what the nature of the extent  
18 of the order that the judge in Calcasieu Parish might  
19 enter, but I think there are -- there are potential buyers  
20 who'd say: Well, gosh. I've got a judge who's telling me  
21 that they've got the authority, and I'm going -- I'm going  
22 to plunk down some money on that basis. I don't know that  
23 that's going to happen. I'm saying it's not impossible.  
24 It could happen.

25 Q. We're not talking about imminent harm, we're



1 talking about something that's -- you think somehow could  
2 be within the realm of possible somehow, somehow if a bunch  
3 of stuff happens.

4 A. I'm thinking -- my testimony is that the fact that  
5 the Court might enter an order authorizing the co-trustees  
6 to act opens the trust up to harm, which is does not get  
7 exposed to if the trustees are enjoined from pursuing that  
8 action.

9 Q. Okay. And you think this Court in the 14<sup>th</sup>  
10 Judicial Circuit of Calcasieu Parish might be open to  
11 setting off this chain reaction of events that would open  
12 the floodgates to somehow dissipation of trust assets?

13 A. I don't know.

14 Q. You have no idea, right?

15 A. I don't know what the judge would do.

16 MR. AKIN: No further questions.

17 MR. WEBER: I have no questions, Your Honor.

18 MS. PACHECO: Nothing further, Your Honor.

19 THE COURT: Thank you, Mr. Davis, for your  
20 testimony. You're excused at this time.

21 MR. DAVIS: Thank you, Your Honor.

22 THE COURT: Mr. Weber, you had something you  
23 wanted to --

24 MR. WEBER: I do, Your Honor.

25 As the Court heard, there's a status

1 conference tomorrow in Louisiana. And despite what  
2 everybody says, my clients are not wanting to run afoul of  
3 this Court's orders. And we would like to know whether  
4 this Court would view participating in a Louisiana  
5 litigation, in general, and, specifically, the status  
6 conference tomorrow, whether that -- this Court views that  
7 as a violation of the temporary restraining order.

8 THE COURT: Is it only -- who would be a part  
9 of the status conference?

10 MR. WEBER: My understanding is it would be  
11 Mrs. Marshall's lawyers, Preston Marshall's lawyers, and  
12 the co-trustee's lawyer.

13 THE COURT: I don't see that as a violation  
14 at this point.

15 MR. WEBER: And going forward, in general,  
16 with litigation in Louisiana?

17 THE COURT: That's a question that we're  
18 trying to resolve today and tomorrow.

19 MR. WEBER: Okay. I -- I would like some  
20 more guidance from the Court on that, and -- certainly at  
21 the end of day.

22 The other issue is: Preston Marshall has  
23 sued my clients and Mrs. Marshall and allege this  
24 co-conspiracy and all sorts of bad things. And,  
25 ordinarily, there's no prohibition against the defendants

1 working together to jointly defend themselves. And I'm  
2 concerned that there's some language in the temporary  
3 injunction order -- specifically, there's a prohibition  
4 that says that -- that Mrs. Marshall is enjoined from  
5 taking any action in conjunction with the co-trustees  
6 regarding the Falcon or Harrier Trusts. And I understand  
7 that that means with respect to the management of the trust  
8 and so forth, but I'm concerned that that may lead this  
9 Court to view any joint defense efforts in defending this  
10 -404 case as being in violation of that order. And I don't  
11 want to do that.

12 THE COURT: Well, that was brought up today.  
13 And I think that's something -- I mean, that's not  
14 something that I can offer guidance on at this time.

15 MR. WEBER: Okay. Because, obviously, due  
16 process allows us to defend ourselves and avail ourselves  
17 of the remedies and -- and rules that are in place to do  
18 that. And if this Court's going to limit those, we'd like  
19 to know.

20 THE COURT: Like I said -- I mean, that  
21 was -- that was brought up today -- earlier this morning --  
22 and I just -- I can't offer guidance at this time.

23 MR. WEBER: Thank you.

24 THE COURT: So I'm going to calculate the  
25 times and give that to you guys. And we need to make sure

1 we have all of the exhibits for Ms. Gonzalez. So everyone  
2 is free to go, with the exception that we need to make sure  
3 that we've got all of our exhibits together. And if you  
4 want to know the times that you've used, I will -- we can  
5 confer about that and make sure that my timekeeping was  
6 accurate.

7 MR. TRIBBLE: And so -- and we'll work with  
8 the court reporter and make sure she has all the exhibits,  
9 Your Honor.

10 Here are my calculations, and there's one  
11 kind of weird issue that we need guidance on. For us, I  
12 think we're at 162 minutes. For them, I have them at 136  
13 minutes; but that includes -- Mr. Akin took the witness on  
14 voir dire for 8 minutes. And -- so I put that in his  
15 column.

16 MR. AKIN: It wasn't on voir dire. I asked  
17 him two questions.

18 MR. TRIBBLE: No -- no.

19 MR. AKIN: We argued -- we argued -- we  
20 definitely argued about this. It wasn't question --

21 MR. TRIBBLE: He interrupted direct  
22 examination and it lasted for 8 minutes, so I put it in his  
23 column.

24 THE COURT: Okay.

25 MR. TRIBBLE: Ten minutes for the

1 co-trustees.

2 MR. WEBER: Oh, okay.

3 MR. TRIBBLE: So you're good.

4 THE REPORTER: Judge, are we still on the  
5 record?

6 THE COURT: We're still on the record, I  
7 suppose. I mean, no one's asked to go off the record.

8 MR. AKIN: May I release the witness to be  
9 excused?

10 THE COURT: He's been excused.

11 MR. COX: We're fine to go off the record if  
12 the Court would like to go off the record.

13 MR. TRIBBLE: I agree.

14 MR. COX: So we agree to go off the record,  
15 Your Honor.

16 THE COURT: Okay. We're off the record.

17 *(Proceedings concluded at 5:44 p.m.)*  
18  
19  
20  
21  
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25

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3  
4 I, Ramona Gonzalez, Deputy Court Reporter in and for the  
5 Probate Court No. 4 District Court of Harris, State of Texas,  
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